160 U.S. 53

160-53

RECORD, CASE NO. 14584.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM NO., 441. ~~437~~ 19

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

THE WESTERN UNION TELEGRAPH COMPANY AND THE UNION PACIFIC RAILWAY COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED APRIL 20, 1891.

RECORD, CASE NO. 14584.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM NO., 441.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

THE WESTERN UNION TELEGRAPH COMPANY AND THE UNION PACIFIC RAILWAY COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Writ of error	1	1
Clerk's certificate and return	2	1
Summons	3	2
Complaint	4	2
Answer of The Union Pacific Railway Company	12	7
Amended answer of The Western Union Telegraph Company	17	9
Stipulation as to agreed statement of facts	20	11
Agreed statement of facts	21	11
Exhibit No. 1. Contract between the Atlantic and Pacific Telegraph Company, and the Union Pacific Railway Company, made September 1, 1869, and supplement thereto, December 14, 1871	29	16
No. 2. Agreement between Union Pacific Railway Company, Eastern Division of Kansas, and the Western Union Telegraph Company, October 1, 1866.	38	21
No. 3. Agreement between Western Union Telegraph Company and the Union Pacific Railway Company, July 1, 1881	44	25
No. 4. Rates of pay for communications by telegraph	58	33

	Original.	Print.
Minutes of trial	69	40
Order and consent extending time to make and serve case, etc	71	41
Judgment	73	41
Bill of exceptions	75	42
Agreed statement of facts	76	42
Exhibit No. 1. Contract between the Atlantic and Pacific Telegraph Company and the Union Pacific Railway Company, made September 1, 1869, and supplement thereto, December 14, 1871	84	47
No. 2. Agreement between Union Pacific Railway Company, Eastern Division of Kansas, and the Western Union Telegraph Company, October 1, 1866	93	52
No. 3. Agreement between Western Union Telegraph Company and the Union Pacific Railway Company, July 1, 1881	99	56
No. 4. Rates of pay for communications by telegraph	113	64
Motion for verdict for plaintiff overruled	124	71
Motion for verdict for defendants granted	124	71
Charge of the court	125	71
Judge's certificate to bill of exceptions	133	74
Assignment of errors	134	75
Joinder in error of Western Union Telegraph Company	136	76
Joinder in error of Union Pacific Railway Company	138	76
Citation	140	77
Proof of service of citation	141	77

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between the United States of America, plaintiffs, and the Western Union Telegraph Company and the Union Pacific Railway Company, defendants, a manifest error hath happened to the great damage of the said the United States of America, as by their complaint appears. We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the part aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the third Monday of *of* April *her*, eighteen hundred and ninety-one, in the said Supreme Court, to be then and there held that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 26th day of March, in the year of our Lord one thousand eight hundred and ninety-one.

JOHN A. SHIELDS,
Clerk.

The foregoing writ is hereby allowed.

E. HENRY LACOMBE.

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from three to one hundred forty-one, inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of the United States of America, plaintiff in error, against the Western Union Telegraph Company and the Union Pacific Railway Company, defendants in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this 17th day of April, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and fifteenth.

[SEAL.] JOHN A. SHIELDS,
Clerk.

(Indorsed:) E. & A. A. 977. U. S. Supreme Court. The United States of America, plaintiffs in error, against the Western Union Tel. Co. and the Union Pacific Railway Company, defendant' in error.

Original. Writ of error. Edward Mitchell, attorney for plaintiffs in error. Due service of a copy of the within writ of error is hereby admitted this 27 day of March, 1891. Rush Taggart, Holmes & Adams, attorney' for defendant in error. U. S. circuit court. Filed March 27. 1891. John A. Shields, clerk.

3 United States circuit court for the southern district of New York.

THE UNITED STATES OF AMERICA
against
THE WESTERN UNION TELEGRAPH COMPANY and the Union Pacific Railway Company.

To the above-named defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the honorable Morrison R. Waite, Chief Justice of Supreme Court of the United States, at the city of New York, this 10th day of March, in the year one thousand eight hundred and eighty-eight.

[L. S.] TIMOTHY GRIFFITH,
Clerk.

STEPHEN A. WALKER,
U. S. District Attorney, Plaintiff's Attorney.

Office and post-office address: Post-office building, New York City, New York.

4 Circuit court of the United States for the southern district of New York.

THE UNITED STATES OF AMERICA
vs.
THE WESTERN UNION TELEGRAPH COMPANY and the Union Pacific Railway Company.

The complaint of the plaintiff, by Stephen A. Walker, United States attorney, respectfully shows on information and belief:

First. That the defendant, the Western Union Telegraph Company, is and was at the times hereafter stated a corporation organized under the statutes of the State of New York, and that the Pacific Railway Company is a corporation created on or about the year 1881 under the authority of sec. 16, chap. 216, laws of 1864, by consolidation of the corporations known as the Union Pacific Railroad Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company.

Second. That the Union Pacific Railway Company or its predecessors in interest, whose obligations and liabilities it has assumed at and before the times hereinafter mentioned, received from the plaintiff large grants of lands and bonds under the acts of 1862, 12 U. S. Stat., 439; 1864, 13 U. S. Stat., 356, for the purpose of construction and maintenance of rail-

way and telegraphic lines west of the Mississippi River, and under and by virtue of section 6 of the act of 1862, above named, it was provided that, in consideration of the grants of lands and bonds to the railways mentioned in said act to aid in the building of railroad and telegraph
5 lines, the railroad companies should pay the bonds at maturity, and should keep the railroad and telegraph lines in repair and use, and should at all times transmit dispatches over said telegraph line for the Government whenever required to do so by any department thereof, and that the Government should at all times have the preference in the use of the same at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of services, and that all compensation for such services rendered for the Government should be applied to the payment of the bonds and interest until the whole amount was fully paid.

By the act of 1864 above mentioned, the Government made further grants of lands and bonds in aid of the construction of roads and telegraph lines, and under section 15 of said act required the several companies named to operate and use their roads and telegraph lines for all purposes of communication, travel, and transportation, so far as the public and Government are concerned, as one continuous line; and in such operation and use to afford and secure to each equal advantages and facilities as to rates and transportation without any discrimination of any kind, or in favor of the road or business of any or either of the other companies; and it was not lawful for the proprietor of any line of telegraph authorized by said act to refuse or fail to convey for all persons requiring the transmission of news and messages.

Under these statutes the railroad companies mentioned in said acts constructed telegraph lines from Omaha to San Francisco and to other points; and the earnings of the companies for telegraphic services rendered to the United States were liable to be retained and applied as provided for therein, and all compensation for services rendered to the Government of the United States were to be appropriated to the payment of the bonds and interest until the whole amount of said bonds and interest was fully paid.

Under chapter 96, session laws of 1878, which was amendatory of the two acts hereinabove mentioned, it was provided: "That the whole
6 amount of compensation which may from time to time be due to said several railroad companies respectively, for services rendered for the Government shall be retained by the United States; one-half thereof to be presently applied to the liquidation of the interest paid and to be paid by the United States upon the bonds so issued by it as aforesaid to each of said corporations severally; and the other half thereof to be turned into the sinking fund hereinafter provided for the uses therein mentioned."

The Union Pacific Railway Company or its predecessors in interest accepted the provisions and bounties described and conceded by the abovementioned acts of Congress, and constructed and maintained on its own account telegraph lines along its railway from Council Bluffs to Ogden, continuous telegraph lines, and the Western Union Telegraph or its predecessors in interest also constructed continuous telegraph lines between said points by consent of said railway, and on or near the road bed of the railway company, which said lines were managed and controlled exclusively by said telegraph company until the 1st of July, 1881.

Third. On July 1st, 1881, an agreement was entered into between the Union Pacific Railway Company and the Western Union Telegraph Company, the defendants above named, which agreement recites that the parties to the agreement were then and for some time past had been operating lines of telegraph along the various railroads of the railway company under sundry contracts made between the railway company and the Western Union Company, or other telegraph companies which had subsequently, by purchase or consolidation, become merged into the Western Union Telegraph Company, and that disputes had arisen and then existed between the parties which it was desirable to terminate as far as practicable, and to embody in one new contract the agreement which was to be in lieu of existing contracts, and that for the purpose of providing telegraphic facilities for the parties hereto, and for maintaining and operating
7 lines of telegraph along the railway company's roads in the most economical manner in the interest of both parties, and for the purpose of fulfilling the obligations of the railway company to the Government of the United States and the public in respect to the telegraph services required by the act of Congress, July 1, 1862, and the amendments thereto, the parties entered into said contract.

This contract provided that the railway company, so far as it legally might do so, granted and agreed to assure the telegraph company the exclusive right of way under and upon the land of the railway company, and any extensions and branches thereof for the construction, maintenance, operation, and use of lines or poles and wires for commercial use or public use or business, with the right to put up additional wires of its own on the railway company's poles, and additional lines of poles and wires, and the railway company agree not to transport men or materials for the construction or operation of a line of poles and wires in competition with the Western Union, except at the regular local rates, nor furnish any competing line any facilities or assistance that it might legally withhold; and in protecting and defending the exclusive rights given by this contract, the telegraph company might use and proceed in the name of the railway company, but should indemnify and save harmless the railway company from all costs and damages.

It was also provided, that all of the telegraph lines and wires covered by the contract, whether belonging to or used by the telegraph company or railway company, should form part of the general system of the Western Union Telegraph Company. The railway company also agreed that its employees should transmit over the lines owned, controlled, or operated by the parties to the agreement all commercial telegraph business offered at the railway company's offices, and should account to the telegraph company exclusively for all or such business and receipts thereof. And no employee of the railroad compaay should be employed by or have any connection with any other telegraph company. And the Western
8 Union Company shall have the exclusive right to occupancy of and connection with the railway company's stations for commercial or public telegraph purposes as against any other telegraph company.

It was also provided that if any person or party or any officer of the Government would tender a message for transmission over the railway company's telegraph lines between Council Bluffs and Ogden at any rail-

way telegraph station between those points, and should require that the service be rendered by the railway company, the operator to whom the same is tendered should receive and forward the same at rates to be fixed by the railway company to the point of destination, if not beyond its own lines. And if the destination be beyond the railway company's lines, the telegraph company when receiving the same at the point at which it leaves the said railway lines might demand prepayment of tolls for the service of forwarding the message on its own lines: Provided, however, that the local receipts of the railway company on such messages should be divided between the parties as provided by the 10th clause of the agreement.

By said tenth paragraph it was agreed that the telegraph company should supply instruments and local batteries and blanks and stationery for commercial telegraph business at offices established and maintained by the railway company; that at all stations of the railway company the employees should receive, transmit, and deliver such commercial or public messages as may be offered, and should render to the telegraph company monthly statements of such business, and the railway company should cause all such receipts to be paid over to the telegraph company monthly. As compensation to the railway company for its services, the telegraph company agreed to pay or return to the railway company one-half of the monthly receipts at telegraph stations maintained and operated by and at the expense of the railway company.

It was further agreed that the management of the wires, the repairs of all lines along the railway company's railroads, and the distribu-
9 tion of materials for use on said lines should be under the supervision and control of the superintendent, who should be appointed and paid jointly by the parties, and whose salary should be fixed by mutual agreement, and he should be equally the servant of each of the parties.

It was further provided that the telegraph company should assume and protect the railway company from the payment of all taxes levied and assessed upon the telegraph property belonging to either of the parties.

Fourth. Under the foregoing contract since July 1, 1881, the telegraph lines of the Union Pacific Railway Company and those of the Western Union Telegraph Company have been operated, having in most places along the line of the railway common offices, and whenever the agents or officers of the Government delivered a telegraphic message at any office along the line of the Union Pacific Company the Western Union Company would make out a bill therefor in its own name; and if the message was prepaid received payment therefor; and if the charges were to be collected at the place of delivery the Western Union Company would collect and receive the same.

Fifth. The Western Union Telegraph Company has, by virtue of its agreement with the Union Pacific Railway Company since the execution of the contract aforesaid, received from time to time very large sums of money for services rendered to the Government, which the railway company was under obligation to render by virtue of the provisions of the Pacific Railway Company's acts; and the compensation for which was to be withheld and applied to the satisfaction of the indebtedness of the railway company's to the Government.

Sixth. The direct parties from whom the moneys were received as aforesaid by the Western Union Telegraph Company were mainly paymasters, quartermasters, and other officers of the Army, who, under the
10 rules established by the Western Union Company, were required to prepay messages tendered by them for transmission over the lines of said telegraph and railway company, and the exigencies of the public service did not admit of the delay necessary in requiring of said defendants, or either of them, such service to be performed on behalf of the Government without prepayment of the charges therefor.

Seventh. The moneys received by the Western Union Telegraph Company for services rendered to the Government, and which, under the Pacific Railway Companies' acts should be applied to the payment of the indebtedness of the railway company to the United States, form part, under the said contract, of the general accounts between the Union Pacific Railway Company and the Western Union Telegraph Company, and have been divided between each party in the accountings had under the terms of that contract. Each party to said contract was chargeable with notice of the obligations of the Pacific Railway Company to the Government of the United States for a specific appropriation of the moneys so received.

Eighth. That neither the Western Union Telegraph Company nor the Union Pacific Railway Company have paid over to or accounted for the sums of money received by the said Western Union Telegraph Company, rendered for and in behalf of the Government since the execution of the contract between the companies hereinbefore referred to.

Ninth. That since the execution of the contract aforesaid the several officers of the Government who paid to the Western Union Telegraph Company sums of money for services rendered to the Government in the transmission of telegraphic messages have rendered their respective accounts of the same and the same have been allowed and passed as proper credits upon the individual accounts of said officers and the total amount of said credits and of the sum in which the Government is damni-
11 fied by reason of the retention and nonapplication of the compensation for services on behalf of the Government to the payment of the obligations of said railway company, as provided by law, in the sum of $12,495.62.

Wherefore plaintiff demands judgment against the defendants for the sum of $12,495.62 and costs of this action.

STEPHEN A. WALKER,
U. S. Attorney, Plaintiffs' Attorney.

CITY AND COUNTY OF NEW YORK, *ss:*

Stephen A. Walker, of said city, being duly sworn, says that he is the United States attorney for the southern district of New York: That he has read the foregoing complaint, and that the same is true of his own knowledge except the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

STEPHEN A. WALKER,

Sworn to before me this 10th day of March, 1888.

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

12 Circuit court of the United States for the southern district of New York.

THE UNITED STATES OF AMERICA *against* THE WESTERN UNION TELEGRAPH COMPANY and the Union Pacific Railway Company.	Answer of the Union Pacific Railway Co.

Now comes the Union Pacific Railway Company and for separate answer to the complaint states:

First. This defendant admits the allegations of the first paragraph of the complaint, except that the railway company was created by consolidation, as stated, in the year 1880, instead of 1881, as alleged in the complaint.

Second. This defendant admits that the Congress of the United States passed the act of 1862 and the act of 1864, as mentioned in the complaint; but this defendant refers to the said acts for the nature of the various provisions thereof applicable to this controversy, and does not admit the deductions and statements contained in the complaint in respect of the meaning and effect thereof. It admits that Congress passed Chapter 96 of the laws of 1878, which is commonly called the "Thurman Act," to which, that the nature of its provisions may be the better known, this defendant begs leave to refer. This last mentioned act this defendant never assented to or accepted; it was imposed upon it, and so far as it is lawful it is so by reason of its force as an enactment, and not by reason of this company's assent to or acceptance of the same.

13 This defendant admits that it did construct and maintain on its own account a telegraph line along its railway from Council Bluffs to Ogden. It admits on information and belief that the Western Union Telegraph Company, or its predecessors in interest, also constructed continuous lines of telegraph between Omaha and Ogden and placed the same on and along or near the lines of railroad of said Union Pacific Railway, but as this defendant is advised, and on information and belief states, the said telegraph company or companies did this, not by the consent of the railway company, but under and by virtue of the power and authority conferred upon them by section 19 of the said act of Congress of July 1st, 1862. And this defendant admits that the said lines of telegraph thus built by the Western Union Telegraph Company or its predecessors were managed and controlled exclusively by the said telegraph company until the 1st day of July, 1881, after which date they have been managed and controlled under and pursuant (this defendant is advised and believes) to the provisions of the contract dated July 1st, 1881, referred to in the third paragraph of the complaint.

Third. This defendant admits that on or about July 1st, 1881, an agreement was entered into between it and the Western Union Telegraph Company, of the general nature set forth in the third paragraph of the complaint. This defendant does not admit that all the material parts of the said contract are fully or accurately recited in the third paragraph of the complaint, and begs leave to refer to the original of said contract for the exact nature and true meaning of its several provisions as applicable to the present suit.

Fourth. This defendant admits that since July 1st, 1881, the telegraph lines of the Union Pacific Company and those of the Western Union Company have been operated pursuant to the terms and provisions of the said agreement.

This defendant is not advised and has no knowledge, information, or belief as to the course pursued by the agents and officers of the
14 Government in delivering telegraph messages at telegraph offices along the line of the Union Pacific Company, and therefore denies the allegations of the fourth paragraph of the complaint in this behalf, and leaves the plaintiff to make proof thereof.

This defendant is advised and states that the said contract of July 1st, 1881, does not disable this defendant from performing all the duties enjoined or imposed upon it by the said acts of Congress in relation to telegraph service for the Government or the public, and alleges that it has performed and discharged all of the said duties for the Government and others whenever and by whomsoever requested.

Fifth. Answering the fifth paragraph of the complaint this defendant has no knowledge or information sufficient to form a belief, and therefore can neither admit nor deny the allegation that the Western Union Company has, by reason of its agreement with the Union Pacific Railway Company, since the execution of the contract aforesaid, received from time to time, very large sums of money for services rendered to the Government which the defendant railway company was under obligation to render by virtue of the said acts of Congress, and the compensation for which was to be withheld and applied to the satisfaction of the indebtedness of the railway company to the Government. This defendant denies that it refused to perform for the Government any service which, by virtue of the provisions of the Pacific Companies railway acts, it was under obligation to render for the Government.

Sixth. Answering the sixth paragraph of the complaint this defendant has no knowledge or information sufficient to form a belief as to the truth of the averments thereof, and therefore denies the same, and leaves the plaintiff to make such proof thereof as it shall be advised.

15 Seventh. Answering the seventh paragraph of the complaint this defendant says that from time to time the accounts between the Western Union Telegraph Company and the railway company have been adjusted pursuant to the provisions of the said contract of July 1st, 1881, but this defendant has no knowledge concerning the amounts named in and claimed by the plaintiff in the complaint, nor out of what services the said amounts grow, whether rendered on aided lines exclusively, or on both aided and non-aided lines, or on the Western Union Telegraph Company's own line or lines, and has no means of ascertaining or verifying the same from its books or accounts. If the officers of the Government, when tendering telegrams for transmission, pay for them the railway company can not, of course, distinguish such messages from messages offered to it by private parties. If such messages were paid for in cash to the railway company it increased to that extent the earnings on which the United States was entitled to a percentage. If they had not been paid for in cash, but charged by the railway company in account against the Government the amount would have been the same and would have been applied in the same way, and in either event the result is the same to the

Government. This defendant is not in default to the United States in respect of the cash requirements or percentages to the Government under the acts of 1862, 1864, or 1878, or any other acts of Congress.

Eighth. Answering the eighth paragraph of the complaint this defendant denies that it is under any obligation to pay over or account for any sums of money received by the Western Union Telegraph Company for services rendered by it for and in behalf of the Government since the execution of the contract of July 1st, 1881, or otherwise.

Ninth. This defendant has no knowledge or information sufficient to form a belief so as to be able to either admit or deny the allegations in the ninth paragraph of the complaint, and therefore denies the
16 same and leaves the plaintiff to make such proof thereof as it may be advised. This defendant denies any liability to pay to the Government the said sum of $12,495.62, or any part thereof.

Tenth. This defendant denies each and every allegation in said complaint contained not herein specifically answered, admitted, or denied.

Wherefore, this defendant demands judgment that the complaint be dismissed, and that it have its reasonable costs in this behalf.

Filed under this defendant's corporate seal.

[SEAL.] HOLMES & ADAMS,
Attorneys for Defendant Railway Company, 35 Wall street, New York.
JOHN F. DILLON,
Of Counsel for said Railway Company.

STATE OF NEW YORK,
City and County of New York, ss:

James M. Ham, being duly sworn, says that he is assistant secretary and assistant treasurer of the Union Pacific Railway Company, one of the defendants above named; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true; the corporate seal of said defendant is affixed to this answer.

JAS. M. HAM.

Sworn to before me this 28th day of March, 1888.
EDW. B. HAWKINS,
Notary Public, N. Y. City and Co.

17 Circuit court of the United States for the southern district of New York.

THE UNITED STATES OF AMERICA
vs.
THE WESTERN UNION TELEGRAPH COMPANY and the Union Pacific Railway Company.

AMENDED ANSWER.

The Western Union Telegraph Company, by Rush Taggart, its attorney, by the way of amended answer to the complaint of the plaintiff, says:

First. It admits the allegations in the first paragraph of said complaint.

Second. It admits the allegations in the second paragraph of said complaint, save and except the allegation that "The Western Union Telegraph Company or its predecessors in interest also constructed continuous telegraph lines between said points by consent of said railway and on or near the roadbed of the railway company, which said lines were managed and controlled exclusively by said telegraph company until the 1st of July, 1881," and as to this allegation it says that its predecessor corporations constructed said telegraph lines under and by virtue of the acts of Congress referred to the said complaint.

Third. It admits the making of a contract on July 1st, 1881, and for a full statement of the contents asks leave to produce the same upon the trial.

18 Fourth. It admits that it and the said Union Pacific Railway Company have in most places common offices, but it says that it has only rendered bills for messages delivered to it to be transmitted over its lines, or for messages actually transmitted by it.

Fifth. It denies the allegations of the fifth paragraph of the complaint.

Sixth. It denies the allegations of the sixth paragraph of the complaint, except as herein stated, to wit:

It says that all the accounts in the bill of particulars of the plaintiff for what are therein designated as "Signal Service reports" were settled and paid for by the Government upon monthly statements rendered by this defendant to the proper officers of the War Department for the services rendered by the defendant in transmitting the said Signal Service reports; that as to the remaining messages from Army officers contained in said bill of particulars, the compensation for many, if not all, of said messages was paid by the sender or receiver of such messages at the Postmaster-General's rates at the time of the sending or receiving of such messages, and that it is informed and believes, and therefore avers, that the accounting officers of the Government have reimbursed said officers for the money thus paid to the defendant for the transmission of said messages.

Seventh. It admits that it has divided the moneys received by it for transmitting messages with its codefendant, under and in accordance with the provisions of the contract hereinbefore alluded to, but denies that any portion of the amount received by it should be applied as in said paragraph alleged.

Eighth. It admits that it has not paid over or accounted for the sums of money received by it, and as to its codefendant it can neither affirm nor deny.

19 Ninth. It has no knowledge or information sufficient to form a belief as to the allegations of the ninth paragraph in said complaint and therefore denies the same.

RUSH TAGGART,
Attorney for the Western Union Telegraph Company.

STATE OF NEW YORK,
City and County of New York, ss:

, being duly sworn, says he is the of the Western Union Telegraph Company; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except

as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

Sworn to before me this day of , 1889.

20 The United States circuit court for the southern district of New York.

THE UNITED STATES
vs.
THE WESTERN UNION TELEGRAPH COMPANY and The Union Pacific Railway Company. } Stipulation.

It is hereby stipulated and agreed by the parties to the above-entitled cause that the annexed statement of facts is agreed upon, and upon the trial of this case may be taken as a finding of facts by the court if submitted for trial to the court, or as a special verdict of the jury, by the jury, if tried to a court and jury. It is, however, not to be considered as an admission of the facts therein set forth by any of the parties to this cause, except for the purposes of this particular case.

(Signed) EDWARD MITCHELL,
United States Attorney, Attorney for Plaintiff.

(Signed) RUSH TAGGART,
Attorney for Western Union Telegraph Company.

(Signed) HOLMES & ADAMS,
Attorneys for Union Pacific Railway Company.

21 In the United States circuit court for the southern district of New York.

THE UNITED STATES
vs.
THE WESTERN UNION TELEGRAPH COMPANY and The Union Pacific Railway Company.

AGREED STATEMENT OF FACTS.

I.

The Western Union Telegraph Company is a corporation of the State of New York and organized under "An act of the legislature of the State of New York entitled an act to provide for the incorporation and regulation of telegraph companies," passed on the 12th day of April, 1848, and has been such telegraph company since on or about the 8th day of April, 1851. The United States Telegraph Company was organized under the laws of the State of New York in the year 1862. The United States Extension Telegraph Company was organized under the laws of the State of New York in the year 1865. The Pacific Telegraph Company was incorporated in 1861 by special charter of the legislature of Nebraska. The California State Telegraph Company was organized as a corporation under the laws of the State of California in the year 1861. All of said companies and all of their property are now possessed and operated by the Western Union Telegraph Company, the defendant herein.

22 II.

The Union Pacific Railroad Company was incorporated by an act of Congress entitled "An act to aid in the construction of a railroad and telegraph line between the Missouri River and Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved on the first day of July, 1862, under which act and the act amendatory thereof of July 2, 1864, the said company in 1865 began to construct and in 1869 completed the construction of a line of railroad from Council Bluffs, Iowa, to Omaha, Nebraska; Council Bluffs, Iowa, to Ogden, Utah.

The Leavenworth, Pawnee and Western Railroad Company, a corporation of the former Territory, now State of Kansas, began in 1865 the construction of, and in 1870 completed, a line of railroad from Kansas City to Denver, Colorado, at which latter point it connected with the railroad of the Denver Pacific Railroad and Telegraph Company, which last-named road ran from Denver to Cheyenne. The Denver Pacific Railroad and Telegraph Company was incorporated by a charter granted by the legislature of the Territory of Colorado.

In the year 1880 said three railroad companies duly consolidated their lines, property, and franchises and formed the Union Pacific Railway Company, the defendant herein. Prior to said consolidation said Leavenworth, Pawnee and Western Railroad Company, defendant, duly changed its corporate name; first, to the Union Pacific Railway Company, Eastern Division; afterwards to the Kansas Pacific Railway Company.

The Union Pacific Railway Company, as now operated, runs from a point on the western boundary of the State of Iowa, as fixed by the President of the United States, at or near Council Bluffs, to Ogden, and from Kansas City to Denver and Denver to Cheyenne.

Aid from the United States by bonds and land grants was given over the entire line of the railroad from a point at or near Omaha to Ogden, and from Kansas City to Boaz (a point between Kansas City and
23 Denver); and aid by land grants alone from Boaz to Denver, and from Denver to Cheyenne.

The interest on the bonds issued in aid of the road has never been reimbursed in full by the railroad company to the United States, and, if in this action the whole amount claimed by the plaintiff is recovered, there will still be a large deficit due from the railroad company on account of such interest over and above all payments made or credits given.

It is agreed, upon the hearing of this cause, that the charters and the proceedings for the organization of said telegraph and railroad companies and their several consolidations may be read by either party to this suit, so far as the same are competent and material evidence upon the issues joined in this cause.

III.

On the 16th of June, 1860, Congress passed an act entitled "An act to facilitate communication between the Atlantic and Pacific States by electric telegraph." Under said last-named act the Pacific Telegraph Company and the California State Telegraph Company began in the year 1861

the work of construction, equipping, and putting in operation a line of telegraph from the Missouri River to San Francisco, and completed the same some time prior to the year 1863. The eastern or initial point of said line was St. Joseph, in Missouri, and thence to Omaha, and thence to Salt Lake, upon substantially the route which was afterwards adopted by the Union Pacific Railway Company as the location for its line of railway between Omaha and Ogden.

In 1864 the Pacific Telegraph Company was consolidated with the Western Union Telegraph Company, and in 1867 the California State Telegraph Company was leased to the Western Union Telegraph Company, defendant herein.

At the time of the act of June 16, 1860, the Western Union Telegraph Company owned or operated lines extending from St. Joseph eastward and southward to the cities of Washington, New Orleans, New York, and other principal cities of the United States. Under the 19th section of the said act of Congress of July 1st, 1862, the said Pacific Telegraph Company and the California State Telegraph Company transferred their lines from their prior location and reconstructed the same upon the right of way of the said Union Pacific Railroad Company, without an arrangement with said railroad company, as rapidly as it constructed its railroad between the point at or near Omaha and Ogden, and they or the Western Union Telegraph Company have, ever since said location of the same upon said right of way, maintained and operated the same. The Union Pacific Railroad Company, when it constructed its road, likewise constructed a separate line of telegraph along its line of railroad from the point at or near Omaha to Ogden. After the construction of said railroad and line of telegraph and on or about the first day of September, 1869, the Union Pacific Railroad Company leased its line of telegraph to the Atlantic and Pacific Telegraph Company by an agreement, and also entered into a supplementary agreement on the 20th day of December, 1871, copies of which are hereto attached, marked Exhibit No. 1, and made a part of this statement of facts. Under these agreements the Atlantic and Pacific Telegraph Company operated the said railroad company's lines of telegraph until on or about the first day of February, 1881, when the said Atlantic and Pacific Telegraph Company was consolidated with and merged in the Western Union Telegraph Company, defendant herein.

The United States Telegraph Company, prior to July 2d, 1864, had begun the construction of a line of telegraph from Wyandotte, Kansas, on the Missouri River, westward and was constructing the same at the time the Leavenworth, Pawnee and Western Railroad Company began the construction of its railroad; and under the act of Congress, entitled "An act for increased facilities for telegraph communication between the Atlantic and Pacific States and the Territory of Idaho," of July 2d, 1864, the said United States Telegraph Company removed its constructed line and located the same upon the right of way of said Leavenworth, Pawnee and Western Railroad Company, and continued to construct its line of telegraph along with the construction of the railroad of said last-named railroad company. On the 27th day of February, 1866, the United States Telegraph Company transferred its telegraph lines and the

right to extend the same to the Western Union Telegraph Company, which company built a line along such railroad as fast as the same was constructed, until the first of October, 1866, when a contract was entered into between the Western Union Telegraph Company and the said railroad company under the name of the Union Pacific Railway Company, Eastern Division, a copy of which is hereto annexed, made part hereof, and marked Exhibit No. 2; and under, and in pursuance of said contract, the telegraph line was completed along said line to Denver, Colorado.

The said Leavenworth, Pawnee and Western Railroad Company constructed no line of telegraph along its line of railroad, but received the compensation prescribed by the several acts of Congress for the full performance by it of the conditions set forth in the acts of Congress, being land and bonds from Kansas City to Boaz, and land from Boaz to Denver.

After the said consolidation with the said Atlantic and Pacific Telegraph Company, and on or about the first day of July, 1881, the Western Union Telegraph Company and the Union Pacific Railway Company entered into an agreement, a copy of which is hereto attached, made part hereof, and marked Exhibit No. 3, being the same agreement referred to in the complaint, and under which the Western Union Telegraph Company has continued to operate the telegraph lines named in the agreement from that date down to the present time; and both parties to said contract have carried out the provisions of the same and are now doing so.

The inventory mentioned in the second paragraph of the contract between the Western Union Telegraph Co. and the Union Pacific Railroad Co. (Ex. 3 annexed) was never completed. In doing business under
26 the contract of 1881, no record was kept, and it is now impossible to prove over what particular wire or wires the messages set out in the plaintiff's bill of particulars were actually transmitted, but a part were sent over what, prior to 1881, were the wires of the railroad company, and the balance over the wires owned by the telegraph company.

Since the contract of 1881, the telegraph company and the railroad company have not maintained distinct offices, or employed different sets of telegraph operators, except at some of the larger towns and cities where the Western Union Telegraph Company has in addition established separate offices for the transaction of commercial business away from the line of the railroad, but the offices have been in common, and the same set of operators had done the work required by both the telegraph company and the railroad company.

IV.

On the 8th day of June, 1867, the Western Union Telegraph Company accepted the provisions of the act of Congress of July 24th, 1866, entitled "An act to aid in the construction of telegraph lines and to secure to the Government the use of the same for postal, military, and other purposes," now sections 5263, 5264, 5265, 5266, 5267, and 5268 of the Revised Statutes of the United States, and filed its written acceptance of the provisions of the same with the Postmaster-General, and under the provisions of section 5266 of said Revised Statutes, the Postmaster-General from time to time has fixed the rates for transmission of messages between the sev-

eral departments of the Government and their officers and agents over the lines of telegraph companies, subject to the provisions of said act of 1886, as shown by circulars for the years included in the account sued upon in this case, hereto attached, made a part hereof, and marked Exhibit No. 4.

27 The Atlantic and Pacific Telegraph Company, on the 19th day of March, 1867, also accepted the provisions of the act of Congress of July 24th, 1866.

The Union Pacific Railway Company has never accepted the provisions of said act of Congress of July 24th, 1866, as to its telegraph lines, but the same remain controlled by the provisions of the acts of July 1st, 1862, of July 2d, 1864, and subsequent acts amendatory and supplementary thereof.

V.

The amount of messages set out in the plaintiff's bill of particulars correctly states the date of each message therein set forth; the sender of the same, and from what point to what point the same was transmitted by the Western Union Telegraph Company; the amount collected by the Western Union Telegraph Company for the transmission of the same; the proportionate amount of the whole sum thus paid to the Western Union Telegraph Company which was for the bonded portion of the telegraph lines along the railways of the Union Pacific Railway Company, such sum being such proportionate amount of the whole amount paid as the distance along the bonded portion of the telegraph along said line or lines of railway bears to the whole distance the message was transmitted from the point of origin to the point of destination; that the compensation for each of the messages was computed and paid for as one entire service and at the then ruling rate for such entire distance fixed by the Postmaster-General of the United States, in accordance with section 5266 of the Revised Statutes of the United States; all of said messages were delivered to the Western Union Telegraph Company by the agent or officer of the Government sending the same, written upon the Western Union Telegraph Company's blanks, and directed to the receiver of such message at the point of destination and without any direction to transmit the same

28 over the bonded portion of the line of telegraph of the Union Pacific Railway Company for the whole or any part of the distance, but it was known to the Western Union Telegraph Company, from the character of the said messages, that they were from one officer or agent of the Government to another. That at all the times the said messages were thus transmitted by the Western Union Telegraph Company at the rates annually fixed by the Postmaster-General of the United States, the ordinary rates, known as commercial rates, charged to other persons for transmitting like messages for the same distances was very much in excess of the rates fixed by the Postmaster-General; that the ordinary or commercial rate upon the bonded portions of the lines of telegraph situated along the lines of railway of the Union Pacific Railway Company was likewise very much in excess of the rates fixed by the Postmaster-General of the United States during the period covered by the account in this action.

That as to a large number of messages included in said bill of particulars and known as Signal Service reports, the same were transmitted under special arrangement and differently from other classes of messages, upon what were known as "circuits," with "drops" at all places receiving the said Signal Service reports. The method of doing said business was as follows: As many places as the Chief Signal Service Officer desired should receive the said Signal Service Report were connected upon one continuous line of telegraph called a "circuit," and the said reports were then sent over this wire, and at each point where said reports were received an operator took the said reports; each of said points thus receiving the report being called a "drop," and all of said points receiving the said reports at the same time; that by reason of this method of sending reports, a specially low rate was made therefor, the said rate being fixed by the Postmaster-General in the circulars issued annually, and upon the basis of amount of matter and number of drops, and extent of circuits. That the circuits for the transmission of said Signal Service reports were made up between the points named in the account in this action, and in-
29 cluded intermediate points or drops in each case; that the amount sought to be recovered in this action is such proportionate amount of the whole amount paid as the distance along the bonded portion of the telegraph lines upon the said line or lines of railway bears to the whole distance over which such messages or reports were sent.

EXHIBIT No. 1.

Contract between the A. and P. Tel. Co. and the Union Pacific Railroad Company, made September 1st, 1869.

This agreement, made this 1st day of September, A. D. 1869, between the A. and P. Tel. Co., a corporation existing under the laws of the State of N. Y., of the first part, and the Union Pacific R. R. Co., a corporation existing under the laws of the U. S., of the second part,

Witnesseth: That the said parties, in consideration of the reciprocal advantages expected to be derived by them and of the accommodations designed to be afforded to the public by the arrangements hereby contemplated, do mutally covenant and agree as follows:

First. That the capital stock of the said party of the first part shall be increased in pursuance of the organic law and by the consent of the present stockholders thereof so as to represent ten millions of dollars in one hundred thousand shares of one hundred dollars each, of which thirty-five thousand shares (being not more than their present stock issued and contracted to be issued) shall be retained by the present stockholders and the whole increase or additional issue shall be used for the purchase of
30 property and the extension of the line of telegraph, as hereinafter provided. Thirty-three thousand shares shall be issued and transferred to the party of the second part in consideration of the demise of their telegraphic lines, property, and good will, and of the rights and privileges in the manner hereinafter specified; and the remaining thirty-three thousand shares shall be reserved by said A. and P. Tel. Co. for the purpose of securing, either by arrangement with the Central Pacific R. R. Co. or with

other corporations or persons, or otherwise establishing and realizing the necessary telegraph lines and franchises so as to complete the through line contemplated hereby.

Second. The party of the second part, in consideration of the transfer to it at the times and in the manner hereinafter set forth of said thirty-three thousand shares of stock, does hereby demise and lease to said party of the first part, all its telegraphic line, wires, poles, instruments, offices, and all other property by it possessed, appertaining to the business of telegraphing, for the purpose of sending messages and doing a general telegraphic business.

To have and to hold, for and during the whole term of the charter of the party of the first part and any renewals thereof, subject, however, to the rights of the U. S., set forth in the charter of the said party of the second part, and on the condition that the said party of the first part faithfully and fully perform all the duties imposed or that may be imposed upon said party of the second part by their charter or by the laws of the United States.

Third. Said party of the second part does hereby covenant to and with the party of the first part that it will proceed at once, so soon as arrangements shall have been perfected for extending said telegraph line to San Francisco, to cause two additional wires to be strung upon the poles thus demised away along the whole length of its line and complete the same with all reasonable speed; said additional wires to be galvanized
31 wire and of not less in size than No. 9 calibre to form part of said demised premises; said wires to be fully equipped and furnished so that together with the two subsisting wires demised, as aforesaid, they may furnish sufficient capacity for the transaction of telegraphic business over the whole length of the railroad of the said party of the second part.

And said party of the second part does hereby covenant to maintain and keep in repair all said poles, wires, and equipments at their own expense during the period of said demise unless the said wires shall from age or other cause require renewal, in which event said renewal is to be made by said party of the first part.

And said party of the second part does hereby covenant that it will at its own expense employ suitable persons for and during the period of twenty-five years to operate said telegraph at stations now located or that may hereafter be required for the purpose of its railroad, except at Omaha and Promontory, or such other stations as shall be found to require for the purpose of transacting the business of both the parties operators in addition to those needed for the business of said party of the second part, which operators at Omaha and Promontory and said other stations are to be furnished at its own expense by said party of the first part.

And said party of the second part doth further convenant that the persons employed by it as aforesaid shall faithfully and properly transact, free of charge, any business which may be offered to the party of the first part, and that all such business shall be transacted in accordance with the rules and regulations which may from time to time be established by the party of the first part and at such rates or tolls as may be fixed by the latter.

Fourth. Said party of the first part doth hereby covenant that the party of the second part shall have at all times the right to the constant and

perpetual use of two of the four wires aforesaid for the purpose of
32 their railroad business free of expense and in preference to all others whenever so required; but when not thus required for railroad purposes the same shall be under the control of the party of the first part and subject to its use for commercial purposes.

And said party of the first part doth covenant that the said party of the second part shall at all times have the free use of the whole line of telegraph that now belongs or may hereafter belong to the said party of the first part or that may be controlled or operated by it to and from all parts of the "U. S.," for all purposes connected with the management of the road or business of the party of the second part, and that in case any arrangement shall be made with the Central Pacific R. R. Co. or with any other co. or persons to extend said telegraph line to, into, or through the State of California there shall not be paid, granted, or allowed any larger portion of the stock of said parties of the first part than the portion agreed to be transferred to the party of the second part, nor any other advantages, terms, or conditions than those hereby granted to and provided for the parties of the second part as herein set forth; and that in case of any such payment, grant, or allowance the same shall be deemed to be granted to the party of the second part, in the same manner as if incorporated in and forming part of this agreement.

And it is further convenanted and agreed between the parties that all existing debts and obligations of the party of the first part for which they are liable on September 1st, 1869, shall be paid and discharged by it out of the thirty-four thousand shares of its stock retained by it as aforesaid or the proceeds thereof, and that of the thirty-three thousand shares of the stock of said A. and P. Tel. Co., to be delivered to the party of the second part as aforesaid, seventeen (17) thousand shares shall be transferred to Oakes Ames, esq., to be by him held in trust; and on the completion of said two additional wires by the party of the second part as herein provided, the same are by said trustee to be transferred to said party of the second part.

And the said party of the second part doth covenant to extend,
33 during the term of this demise, to the parties of the first part, all such preferential privileges and facilities for the prosecution of telegraphic business herein provided for, as are usually granted by R. R. companies in contracts of connection with telegraph companies.

Said party of the second part also agrees to afford to all other telegraph companies only such facilities as by law they now are or may hereafter be required to afford as common carriers or otherwise, in which shall not be included the privilege of using hand cars, or of stopping trains, except at regular stations, or transporting the officers or servants of such companies, except on regular passenger trains at regular rates of fare, or of transporting materials for such Co's or persons (other than the parties of the first part) except on regular freight trains, and at the usual rates of freight, unless the facilities aforesaid, or some of them, shall be required by law to be afforded such companies or persons.

In testimony whereof the parties have interchangeably caused the seals of their respective companies to be affixed hereto, and to one other duplicate original thereof, and the same to be signed by their respective presidents, this first day of September, Anno Domini 1869.

THE ATLANTIC AND PACIFIC TELEGRAPH COMPANY,

{A. & P. TEL. CO. [SEAL].} (Signed) A. F. WILMARTH,
President.

Attest:
(Signed) ALFRED NELSON,
Actg. Secy. A. & P. Tel. Co.

{UNION PACIFIC RY. CO. [SEAL.]} (Signed) UNION PACIFIC R. R. CO.,
OLIVER AMES,
President.

Attest:
(Signed) E. H. ROLLINS,
Secy. U. P. R. R. Co.

34 This supplementary agreement, made this 14th day of December, A. D. 1871, between the A. and P. Tel. Co., a corporation existing under the laws of the State of New York, of the first part, and the U. P. R. R. Co., a corporation existing under the laws of the United States, of the second part:

Whereas by an agreement in writing, made and executed by the parties hereto, bearing date the 1st day of September, A. D. 1869, the said party of the second part hereto, in the third clause of said agreement did covenant to and with the said party of the first part hereto that it would proceed to cause two additional wires to be strung upon the poles thereby demised along the whole length of its line, and complete the same with all reasonable speed; said additional wires to be galvanized wire and of not less in size than No. 9 calibre, to form part of said demised premises, said wires to be fully equipped and furnished, so that together with the two subsisting wires, demised as aforesaid, they might furnish sufficient capacity for the transaction of telegraphic business over the whole length of the railroad of the said party of the second part; and did further agree in the same clause that of the thirty-three thousand shares of the stock of said A. and P. Tel. Co. to be delivered to the party of the second part hereto, as aforesaid, seventeen thousand shares should be transferred to Oakes Ames, esq., to be by him held in trust, and on the completion of said two additional wires by the party of the second part hereto, as therein provided, the same were by said trustee to be transferred to said party of the second part.

And whereas the said parties hereto and to the said original agreement have concluded to modify the said contract by abrogating and surrendering the obligation of the said party of the second part to cause two additional wires to be strung upon the poles by the said original agreement demised; and the said party of the second part, in consideration of such abrogation and surrender has agreed to relinquish unto the said party of
35 the first part the seventeen thousand shares of stock so held in trust by the said Oakes Ames, upon having eighteen hundred shares

of stock of said A. and P. Tel Co. returned to them with the understanding that said eighteen hundred shares shall be an equivalent for the release of the said party of the first part from the obligation to pay the debt which existed before the execution of the said original contract, and have further agreed that the party of the first part may use and apply for the same purposes to which the said seventeen thousand shares are to be applied by the said party of the first part, one thousand shares out of the thirty-three thousand shares, which by the said agreement were to be reserved for the purpose of securing, either by arrangement with the Central Pacific R. R. Co. or with other corporations or persons, or otherwise establishing and realizing the necessary telegraph lines and franchises so as to complete the through line to San Francisco, California, contemplated by said agreement.

Now, therefore, this supplementary agreement witnesseth:

That said parties in consideration of the reciprocal advantages to be derived by them do hereby covenant and agree as follows:

First. That the said party of the second part shall, and hereby does, relinquish and resign unto the said party of the first part all right, title, claim, and interest which the said party of the second part, if this relinquishment were not made might now or at any time hereafter have to the whole, or any part, of the said seventeen (17) thousand shares of the stock of said A. and P. Tel. Co., so held in trust by the said Oakes Ames, and doth hereby irrevocably consent that the said Oakes Ames shall forthwith transfer and deliver all of the seventeen thousand shares of stock to be sold or disposed of by Jno. Duff, esq., as trustee for the parties mutually (or in case of his death or resignation, then of such other substituted trustee or trustee as may be agreed upon by them) and the proceeds applied
36 to the payment of its debts without distinction as to whether the same were contracted before or after the execution of the said original contract and the extension and improvement of its lines, wires, or routes, and doth also consent that the said party of the first part may use and apply to the same purposes one thousand of the thirty-three thousand shares so reserved as aforesaid, for the purpose of accomplishing and realizing the said through line to San Francisco; and doth also hereby and in consideration of the surrender of the said eighteen hundred shares of stock agree to and hereby does relinquish and cancel the obligation of the said party of the first part, to pay off and discharge out of its separate means the debt which existed and arose prior to the execution of the said original contract between the parties hereto.

Second. And the said party of the first part in consideration of the foregoing release and relinquish, doth hereby transfer unto the said party of the second part eighteen hundred shares of stock of the said A. and P. Tel. Co., and doth also fully release and cancel all the obligations of the said party of the second part to cause two additional wires to be strung upon the poles by the said contract hereinbefore mentioned demised along the whole length of the line of the said U. P. R. R. Co., and to complete the same with all reasonable speed.

Third. And it is specially agreed by the parties hereto that nothing herein contained shall in anywise affect, modify, or impair the said original contract except in the respects hereinbefore and hereinafter specially stated; that in all other respects not hereinbefore or hereinafter indicated the said contract shall remain in full force and effect.

But is further agreed that for all the purposes of said original contract and of this supplementary contract, the road of the party of the second part demised by said original contract shall be deemed and taken to terminate at the junction of the U. P. R. R. Co., with the Central Pacific R. R. Co. as now esablished, which junction is at a point about five
37 miles west of Ogden, and all the rights of the parties under said contract and supplement shall be made to conform to this modification.

And it is further agreed between the parties that whereas by the original contract the parties to the second part were to have the right to the constant and perpetual use of two of the four wires herein contemplated, in preference to all others, whenever required for the purposes of their R. R. business, said provision shall be and is hereby modified and changed so that the rights of the party of the second part in preference to others to use said telegraph for the purposes of their R. R. business shall be limited to one only of the subsisting telegraph wires, which it is contemplated shall be the only wires employed in the business.

It is further understood and agreed between the respective parties hereto that in case one of the two wires now in use on the poles of the said U. P. R. R. Co. be down or otherwise obstructed, then and in that case the first and preferred use of the remaining wire is conceded to the said R. R. Co. for transmission of its own business, it being understood that the business of the A. and P. Tel. Co. shall be forwarded immediately thereafter.

In witness whereof the parties hereto have caused these presents to be executed by their respective presidents and attested by their respective secretaries, and their respective corporate seals to be hereunto affixed the day and year first above written.

THE ATLANTIC AND PACIFIC TEL. CO.

By (Signed) WM. H. GUION, *Vice-Prest.* [SEAL.]

Sealed and delivered in the presence of

(Signed) JOHN DONNELLY.

Attest:

(Signed) ALFRED NELSON,
Secretary A. and P. Tel. Co.

THE UNION PACIFIC R. R. CO.

By (Signed) JOHN DUFF, *Vice-Prest.* [SEAL.]

Attest:

E. H. ROLLINS,
Secy. U. P. R. R. Co.

38 EXHIBIT NO. 2.

This agreement, made and entered into by and between the Union Pacific Railway Company, Eastern Division of Kansas, and the Western Union Telegraph Company, hereinafter designated respectfully as the railway company and the telegraph company,

Witnesseth: That for and in consideration of the covenants and agreements herein contained, the parties hereto have mutually agreed as follows, viz:

First. The railway co. agree to pay to the telegraph company the cost of the telegraph poles which have been erected along the railway

company's road between Wyandotte and Fort Riley, except for such as have been already furnished and erected by said railway company, and also to pay the cost of the wire and insulators for a telegraph line with one wire between said points, except for such portion of the distance as the railway company has already provided the wire and insulators. Payment for such poles, wire, and insulators to be made to the treasurer of the telegraph company upon presentation by the latter of the account therefor, duly verified; and no claims shall be made by said telegraph company for messages transmitted previous to the date of this contract, or by the said railway company for transportation of men or material for said telegraph company prior to same date.

Second. The railway company agree to furnish and distribute along their road, west of Fort Riley, as fast as the same is completed, suitable poles for a first-class telegraph line, the dimensions and quality thereof, as well as the number per mile to be determined by the telegraph company; and also to furnish wire and insulators for a line of telegraph with one wire. Provided, however, that if the railway company shall elect to have the telegraph company furnish said poles, wire, and insulators, they shall be so furnished as fast as each section of twenty (20) miles of said railway shall be completed; and the cost thereof not including
39 the expense of erecting the poles, attaching the insulators, and stringing the wire, shall be paid monthly to the telegraph company as provided in the section next preceding (First).

Third. The railway company agrees to supply and distribute like suitable telegraph poles, as they shall be required from time to time hereafter, to repair and renew the line when the same shall be necessary; and in case of neglect to so furnish any such poles, when the same shall be necessary, the telegraph company may procure the same at the cost of the railway company, payable as hereinbefore provided.

Fourth. The railway company agrees to transport free of charge to the telegraph company all persons engaged in, and materials required for, the construction, reconstruction, working, repairing, and maintaining said telegraph line. Also to furnish a suitable telegraph office in the depot at Wyandotte, Kansas, free of charge, and to pay one-half the salary of the operator in said office, so long as same shall be necessary to save telegraph company from loss at said office, or such less amount as may be sufficient to prevent such loss, the said telegraph company to pay the remainder of said salary. Said operator is to be fully qualified, and is to do the railway company's business, and *it* is to be appointed and his salary fixed by the parties to this contract.

Fifth. The railway company agree not to transport any persons engaged in, or property intended for, the construction or repairs of any other line of telegraph along their railway except at the usual and regular rates charged by said railway company for passengers and freights, nor give permission to, or make, any agreement with, any other telegraph company to construct or operate any telegraph line upon the lands or roadway of said railway company, without the consent in writing of the telegraph company. The above agreed to by said railway company so far as it has the legal rights and power to do so.

40 The telegraph company agrees—

First. To erect the poles, attach the insulators, and string the wire to be furnished or paid for by the railway company as hereinbefore

provided in article second of the stipulations by said railway company, as fast as each section of 20 miles of the said railway shall be completed, and in the manner required for a first-class telegraph line, and so as to be accepted by the Government commissioners. Such poles to be put up subject to approval of chief engineer of said railway company.

Second. That the first wire shall belong to the railway company and be for their use exclusively after a second wire is put up; but no commercial or paid business shall be transmitted by the railway company from any station where the telegraph company shall have an office without the consent of the latter.

Third. If the business of the railway company shall, in their opinion, at any time hereafter require the use of more than one wire, they shall have the right to appropriate any other wire on paying to the telegraph company the cost of said wire on the poles, and said telegraph company agree to attach said other wire for this purpose in accordance with this contract if the same shall not at that time be attached.

Fourth. The business of said railway, including its construction lands, and all business of the company, and the family, private, and social messages of the executive officers shall be transmitted without charge between all telegraph stations on the line of the said railway and also between all such stations and the city of St. Louis, Missouri, and over all other lines in Missouri, Kansas, Colorado, and New Mexico, now owned or controlled, or that may hereafter be owned or controlled, by the Western Union Telegraph Company, provided, as far as said lines in Colorado and New Mexico are concerned, the said road or roads of the Union Pacific Railway Company, Eastern Division, shall at the time be in process
41 of construction towards Santa Fe or Denver, or both, and all such business shall be transmitted free of charge over all other lines owned or controlled, or that may hereafter be owned or controlled, by the telegraph company within the United States to an amount not exceeding the rate of four thousand dollars per annum, and for any excess above such rate the telegraph company will deduct and rebate one-half the regular tariff charges, settlements and payments for such excess to be made yearly.

Fifth. Until a second wire is put up as hereinafter provided both the parties hereto may use the first wire, but the business of the railway company shall have precedence, and thereafter, in case either wire is interrupted or is required by the United States, the business of both the parties hereto shall be done upon the other as far as practicable, but without delay or charge to the railway company.

Sixth. The telegraph company shall indemnify the railway company against all claims of their agents for damages to persons or property by accident or otherwise who may travel free over said railway under orders of the telegraph company, and shall not be accountable to said railway company for the consequences of any error which may arise in the transmission or delivery of messages for said railway company, or its officers or agents. And will also give and defend the right to use such instrument now or hereafter to be patented during the first life of such patents, and the renewals thereof as are necessary for the efficient working of said line by the railway company.

Seventh. It is further mutually agreed by and between the parties thereto, that the telegraph company is to furnish all main batteries required

for the efficient working of the telegraph line herein provided for, and is to keep the line in good working order without expense to the railway company, except for the materials which the latter has hereinbefore agreed to supply.

42 Eighth. The railway company may establish at their own expense as many offices as they require, and at all the places where the telegraph company have not separate office, the employees of the railway company shall, so long as it may not interfere with the business of said railway company, receive, transmit, and deliver such commercial or paid business as may be offered at the tariff rates of the telegraph company, provided such paid business does not amount to enough to pay the expenses of a separate telegraph office, and shall account for and pay over to the latter monthly the amount thereof at such rates; and concerning such business, all rules, regulations and orders of the telegraph company applicable thereto shall be observed, but said railway company shall not be amenable in any way to said telegraph company for the acts or operations of said agents otherwise than to remedy the difficulty in future.

Ninth. The telegraph company shall have the right to add as many wires to the lines herein referred to as shall be necessary for the transmission of their own business, but without expense to or interference with the working of the wires of the railway company, and the said railway company shall have the same rights.

Tenth. The telegraph company agrees to perform, without charge, for the railway company what shall be decided by competent authority to be its telegraph obligations to the Government of the United States.

Eleventh. That a line of telegraph be constructed on said railway company's road from Leavenworth, Kansas, to Lawrence, Kansas, at such time between May thirty-first, eighteen hundred and sixty-seven, and September first, eighteen hundred and sixty-eight, as the railway company may decide, and on the same terms and conditions as that west of Fort Riley, as hereinbefore stated.

43 This agreement shall be and continue in force for and during the full term of twenty-five years from the first day of October, one thousand eight hundred and sixty-six, and until one year's notice of its expiration shall have been given by one of the parties hereto. And in case of any disagreements concerning the true intent and meaning of any of the provisions herein contained, the subject of such difference shall be referred to arbiters to be chosen, one by each party and a third by the two thus chosen, and the decision of such arbiters or a majority thereof shall be final and conclusive.

In witness whereof the party to these presents have caused the names of their respective presidents to be subscribed and the corporate seals to be affixed, duly attested, this 1st day of October, 1866.

(SEAL) (Signed) JOHN D. PERRY,
(U. P. Ry. Co.) *President Union Pacific Railway Co., E. D.*

(E. D.) Attest:
(Signed) CHAS. B. LAMBORN, *Secy.*

(SEAL) (Signed) HIRAM SIBLEY,
(W. U. Co.) *Vice-President Western Union Telegraph Co.*

(Signed) O. H. PALMER,
Secy. W. U. T. Co.

OFFICE MISSOURI & WESTERN TELEGRAPH CO.,
St. Louis, Mo., October 1st, 1866.

The provisions of the foregoing contract between the Union Pacific Railway Company, Eastern Division of Kansas, and the Western Union Telegraph Company are fully assented to so far as they relate either to the territory or business of this company.

(Signed) R. C. CLOWRY,
President Missouri & Western Telegraph Co.

SEAL Mo. & Westn. Tel. Co. (Signed) O. H. PALMER,
Secretary Missouri & Western Telegraph Co.

44 EXHIBIT No. 3.

This agreement, made and entered into this 1st day of July, 1881, by and between the Western Union Telegraph Company and the Union Pacific Railway Company, hereinafter respectively designated for convenience as the telegraph company and the railway company, witnesseth:

That whereas the Western Union Telegraph Company has acquired all of the property, rights, and franchises of the Atlantic and Pacific Telegraph Company and is also in possession of and operates a separate line of poles and wires along said main line of road of the railway company between Omaha and Ogden; and

Whereas the parties hereto are now and for sometime past have been operating lines of telegraph along the various railroads of the railway company, under sundry contracts referred to in Exhibit A, hereto attached, made between the said railway company or companies formerly in possession of lines of railroad now controlled by or forming part of the lines of railroad of said railway company and the Western Union Telegraph Company or other telegraph companies which have since, by purchase or consolidation, become merged into the said Western Union Telegraph Company, a schedule of said contracts being hereto annexed and marked "Exhibit A;" and

Whereas disputes have arisen and exist between the parties hereto and various suits are pending between them; and

Whereas it is desirable to terminate, as far as practicable, existing disputes and litigation and to embody into one new contract the agreement of the parties, which new contract is in lieu of said existing contracts referred to in Exhibit A, to the extent and for the purposes hereinafter defined;

45 Now therefore, For the purpose of providing telegraphic facilities for the parties hereto, and of maintaining and operating the lines of telegraph along the railway company's railroads in the most economical manner in the interest of both parties and for the purpose of fulfilling the obligations of the railway company to the Government of the United States and the public in respect to the telegraphic service required by the act of Congress of July 1st, 1862, and the amendments thereto, and in consideration of the covenants and agreements herein contained, the parties hereto have mutually agreed as follows:

First. Each party hereto hereby releases and discharges the other from all claims, debts, liabilities, and demands of whatever nature, arising and accruing under any and all said contracts and agreements up to this date

or otherwise, between the parties hereto or their respective predecessors, and all pending suits are to be dismissed without prejudice, and each party to pay its own costs.

Second. In order to define as nearly as practicable the exact ownership of the telegraph property as it now exists on and along the various railroads and in the various offices of the railway company, a full and complete inventory shall immediately upon the execution of this agreement be made out by two appraisers, one to be appointed by each party hereto; and said inventory shall show in detail all of the telegraph property belonging to each party hereto, separately; and also all the telegraph property owned jointly by the parties hereto, and all of the telegraph property the ownership of which is now disputed; and after said inventory shall have been agreed upon between and signed by the parties hereto, a copy of said inventory, duly certified by said appraisers, shall be filed with each party's copy of this agreement.

Upon the termination of this agreement, as hereinafter provided, in case the parties hereto shall not be able to agree upon a division of or other settlement for the property, the ownership of which is in dispute,
46 then the final disposition of such property shall be referred to and decided by arbitrators chosen in the manner hereinafter provided.

Third. The railway company, so far as it legally may, hereby grants and agrees to assure to the telegraph company the exclusive right of way on, along, upon and under the line, lands and bridges of the railway company and any extensions and branches thereof, for the construction, maintenance, operation, and use of lines of poles and wires, or either of them, or underground or other system of communication for commercial or public uses or business, with the right to put up from time to time or cause to be put up or constructed under the provisions of this agreement, such additional wires on its own or the railway company's poles or such additional lines of poles and wires, or either, as well on its bridges as on its right of way, or to construct such underground lines as the telegraph company may deem expedient, doing as little damage and causing as little inconvenience to the railway company as is practicable, and the railway company will not transport men or material for the construction or operation of a line of poles and wire or wires or underground or other system of communication in competition with the lines of the telegraph company party hereto, except at and for the railway company's regular local rates, nor will it furnish for any competing line any facilities or assistance that it may lawfully withhold, nor stop its trains, nor distribute material therefor at any other than regular stations.

Provided, always, that in protecting and defending the exclusive rights given by this contract, the telegraph company may use and proceed in the name of the railway company, but shall indemnify and save harmless the railway company from any and all damages, costs, charges and legal expenses incurred therein or thereby.

Fourth It is mutually understood and agreed that all of the
47 telegraph lines and wires covered by this contract, whether belonging to or used by the telegraph company or the railway company, for the purposes of this contract as herein provided shall form part of the general system of the telegraph company.

The railway company further agrees that its employees shall transmit over the lines owned, controlled, or operated by the parties hereto, all commercial telegraph business offered at the railway company's offices, and shall account to the telegraph company exclusively for all of such business and the receipts thereon, as provided herein.

No employee of the railway company shall, while in its service, be employed by or have any connection with any other telegraph company than the telegraph company party hereto, and the telegraph company shall have the exclusive right to the occupancy of and connection with the railway company's depots or station houses for commercial or public telegraph purposes as against any other telegraph company.

Provided that if any person or party, or any officer of the Government, tender a message for transmission over the railway telegraph lines between Council Bluffs and Ogden at any railway telegraph station between those points and require that the service be rendered by the railway company, the operator to whom the same is tendered shall receive and forward the same accordingly, at rates to be fixed by the railway company, to the point of destination if not beyond its own lines.

If the destination of such message be beyond said railway company's lines, the telegraph company, when receiving the same at the point at which it leaves the said railway lines, may demand the prepayment of tolls for the service of forwarding the message on its own lines.

Provided, however, that the local receipts of the railway company on such message shall be divided between the parties hereto in the same manner and subject to the same conditions as provided in the 10th clause of this agreement.

Fifth. The railway company agrees to furnish at its own expense
48 all the labor, except a foreman, for the maintenance, repair, and renewal or reconstruction of the existing lines and wires along all of the railway company's railroads, and for the construction, maintenance, repair, and renewal or reconstruction of such additional wires or lines of poles and wires as may be required for commercial or railroad telegraph purposes along said railroads and along future branches and extensions thereof, and along new railroads constructed or acquired by the railway company, except as modified in the sixth clause hereof.

The telegraph company shall furnish a foreman skilled in the work of telegraph construction, who shall have charge of the construction and reconstruction of the lines and wires and the direction of the labor furnished by the railway company for such purposes, said foreman to be subordinate to the superintendent mentioned in article twelfth of this agreement.

Sixth. Each party hereto shall pay one-half of the entire cost of all poles, wire, insulators, tools, and other material used for the maintenance, repair, and renewal or reconstruction of existing lines and wires along all of the railway company's railroads, and for the construction, maintenance, repair, and renewal or reconstruction of such additional wires or lines of poles and wires as may be required for commercial or railroad telegraph purposes along said railroads and along future branches or extensions thereof, and along new railroads constructed or acquired by the railway company, until the total number of wires shall amount to three for the exclusive use of each party hereto, between Council Bluffs and Ogden;

two for the exclusive use of each party hereto between Kansas City and Denver, and one for the exclusive use of each party hereto on all other portions of the railway company's railroads, branches, and extensions.

Each party hereto shall pay the entire cost of the construction, maintenance, repair, and renewal or reconstruction of wires for its exclusive use in excess of the number hereinbefore mentioned. The material of the telegraph company for additional wires to be transported free of charge by the railway company over its own lines, as hereinafter provided.

The telegraph company agrees to furnish at its own expense all blanks and stationery for commercial or public telegraph business, and all instruments, main and local batteries and battery material for the operation of its own and the railway company's wires and offices. The telegraph company shall maintain the main batteries in good working order, but if said batteries are at places where the telegraph company has no batteryman or other employee who can attend to the same, in such cases the railway company's employees shall keep said batteries in good working order, if any of such employees at such place are competent to do it.

Seventh. Each party hereto shall have the exclusive use, under the division of the cost of material hereinbefore provided, of not exceeding three wires between Council Bluffs, Iowa, and Ogden, Utah, and not exceeding two wires between Kansas City, Mo., and Denver, Col., and not exceeding one wire on all other portions of the railway company's railroads; provided, however, that in case either party hereto shall require additional wires between said places hereinbefore mentioned, or along any of the other railroads of the railway company, the party requiring such additional wire or wires shall furnish at its own expense all material for the construction, maintenance, repair, and renewal or reconstruction of such additional wire or wires.

The telegraph company agrees to furnish, free of charge, for the railroad business of the railway company, a direct wire connecting the railway company's office in Omaha, Nebraska, with its office in Kansas City, Mo., and with the railway company's offices at intermediate railroad stations of the railway company along the Missouri River, including Council Bluffs; and the telegraph company will receive, transmit, and deliver, free of charge, at and from its offices at said intermediate stations of the railway company, such messages on the railroad business of the railway company as may be offered by its agents and officers for points on the railway company's roads, provided that the telegraph company may use said wire for the transaction of commercial or public telegraph business, when not in use for railroad business.

Eighth. All messages of the officers and agents of the railway company pertaining to its railroad business may be transmitted, free of charge, between all telegraph stations on the lines of its various railroads over wires set apart for railroad business.

The telegraph company agrees to issue to such officers of the railway company as may be designated by the president or general superintendent thereof, annual franks authorizing the free transmission over any of the lines of the telegraph company in the United States, of messages relating strictly to the railroad or corporate business of the railway company to or from points beyond or off the line of the railway company's railroads, to

an amount not exceeding twenty-five thousand dollars ($25,000.00) per annum for the first three thousand four hundred (3,400) miles of railroad owned or controlled and operated by the railway company, and occupied by a telegraph line erected thereon, and operated under the provisions of this agreement, and six dollars ($6) per annum additional for each additional mile of railroad owned or controlled and operated by the railway company, and occupied as aforesaid.

The tolls on all of such messages to or from points beyond or off the line of said railroads shall be calculated at the regular commercial day rates of the telegraph company, between the points at which such messages are delivered to the telegraph company and the points to which they may be destined; provided, however, that if any such messages be delivered to the telegraph company at any place other than the place at which such messages originate, they shall be transmitted over railroad wires and handled by railroad employees entirely until delivered to the telegraph company. And the railway company agrees to pay to
51 the telegraph company one-half of its aforesaid rates on all such messages in excess of said above-mentioned amount. Settlements to be made yearly.

It is understood and agreed that the free telegraphic service herein provided for is for the transmission of messages concerning the operation and business of the railway company's railroads, and shall not be extended to messages ordering sleeping-car, parlor-car, or steamer berths or other accommodations for customers of the railway company, the tolls on which messages should properly be chargeable to such customers.

Ninth. The railway company agrees to transport free of charge over its railroads, upon application of the superintendent or other officer of the telegraph company, all officers of the telegraph company when traveling on its business, and all employees of the telegraph company when traveling on the telegraph company's business connected with or pertaining to the lines or wires and offices along any of the railway company's railroads. And the railway company further agrees to transport and distribute free of charge along the line of any or all of its railroads all poles and other materials for the construction, maintenance, operation, repair or reconstruction of the lines and wires covered by this agreement, and of such additional wires or lines of poles and wires as may be erected under and in pursuance of the provisions of this agreement. Also all material and supplies for the establishment, maintenance, and operation of the offices along said railroads, it being understood that no charge shall be made for the transportation of poles or other materials over any of the railway company's railroads for use on any other of its railroads.

Tenth. The telegraph company agrees to supply instruments and local batteries and blanks and stationery for commercial telegraph business as hereinbefore provided, at offices established and maintained by the railway company. At all telegraph stations of the railway company its em-
52 ployees shall receive, transmit, and deliver such commercial or public messages as may be offered, and shall render to the telegraph company monthly statements of such business, and full accounts of all receipts therefrom, and the railway company shall cause all of such receipts to be paid over to the telegraph company monthly.

As compensation to the railway company for the services herein provided for, the telegraph company agrees to pay or return to the railway

company monthly one-half of the cash receipts at telegraph stations maintained and operated by and at the expense of the railway company, tolls on ocean cable messages and tolls for lines of other companies excepted, all of which shall be retained by the telegraph company, it being understood that the railway company shall not be entitled to any portion of the tolls on ocean cable messages or tolls belonging to lines of other companies or to any portion of amounts checked against other offices.

And the employees of the railway company shall not, without the consent of the telegraph company, transmit over said telegraph lines any free messages except those provided for herein.

Either party hereto may maintain telegraph offices at places on said railroads where it now has offices, and either party may establish and maintain offices at such other places on said railroads as it may elect; provided, however, that the telegraph company shall not establish any new office, independent of the railway company's office, at any point on said railroads within one mile of an office which may have been previously established by the railway company, unless the railway company shall consent thereto; but the telegraph company may establish and maintain branch offices wherever it may elect so to do in cities or in towns on or along said railroads where it may now have independent offices.

It is understood and agreed, that so long as the commercial telegraph business of places where the telegraph company has no independent offices, and where offices are maintained by the railway company at its
53 railroad stations, is confined within one mile of such railroad stations, and is performed satisfactorily, the telegraph company shall not open an independent office within one mile of such stations, but in case the commercial business at any such railroad station should not be transacted to the reasonable satisfaction of the public, and if the telegraph company shall seek to establish an independent office at such place within one mile of the railroad station, and the railway company should object thereto, then the question shall be decided by arbitration as hereinafter provided.

The railway company agrees that its employees shall not compete with the telegraph company's offices in the transaction of commercial telegraph business at any point where the telegraph company may now or hereafter have an office separate from the railway company's office, by cutting rates or by active efforts to divert business from the telegraph company.

Eleventh. It is a condition of this contract that the railway company is not to be responsible for, and the said telegraph company hereby covenants and agrees to save the said railway company harmless and indemnify it against any loss or damages of any kind arising from any injury to persons in the employ of, or property belonging to said telegraph company, while being carried free over said roads under this agreement, or from any neglect or failure in the transmission or delivery of messages for any person doing business with said telegraph company, or on account of any other public or commercial telegraph business for which said railway company is to account under article tenth hereof, and said telegraph company shall not be responsible for, and the railway company agrees to indemnify and save harmless the telegraph company against any loss or damages of any kind arising from or on account of any error or failure in the transmission or delivery of messages sent for said railway company under this agreement.

54 Twelfth. It is further agreed that the management of the wires, the repairs of all the lines along the railway company's railroad, and the distribution of all materials for use on said lines shall be under the supervision and control of a competent superintendent who shall be appointed and paid jointly by the parties hereto, and whose salary shall be fixed by mutual agreement, and said superintendent shall be equally the servant of each of the parties hereto and shall as far as practicable protect and harmonize the interest of both parties hereto in the transaction of the railroad and commercial telegraph business along the railway company's railroad.

Said superintendent shall be subordinate to and under the control of the superintendents of both parties hereto in the management, repair, reconstruction, maintenance, and operation of the lines and wires and the distribution of material therefor, and shall coöperate with both parties hereto in giving the utmost efficiency to the transaction of the railroad and commercial telegraph business and the working of the lines and wires on said railroads.

Said superintendent may be removed by either party hereto, but his successor shall not be appointed without the consent of both parties hereto.

Thirteenth. The railway company shall have the right to the free use of the telegraph patent rights or new discoveries or inventions, that the telegraph company now owns and uses in its general business or which it may hereafter own and use as aforesaid, so far as the same may be necessary to properly carry on the business of railroad telegraphing on the line of said railroads as provided for herein.

Fourteenth. The telegraph company hereby promises and agrees to assume and protect the railway company from the payment of all taxes levied and assessed upon the telegraph property belonging to either of the parties to this agreement.

55 Fifteenth. The provisions of this agreement shall extend to all railroads and branches or extensions thereof now or hereafter owned or controlled by the railway company, provided however that in case the railway company shall hereafter acquire the ownership or control of any railroad upon which the telegraph company may already have a line of telegraph in operation, the provisions of this contract shall not apply to such railroad and telegraph line without the mutual consent of the parties hereto at the time of such acquisition.

The provisions of this contract shall be and continue in force for and during the term of twenty-five (25) years from the date hereof, and unless one (1) year's written notice next prior to the expiration of said term is given, this contract will continue in force thereafter until one (1) year's written notice shall have been given by one of the parties hereto, of its intention to terminate the same.

In case of any disagreement concerning the true intent and meaning of any of the provisions of this contract, the subject of such indifference shall be referred to three arbitrators, one to be chosen by each party hereto, and the third by the two others chosen, and the decision of such arbitrators, or of a majority thereof, shall be final and conclusive.

In case of any such disagreement arising, either party may appoint in writing an arbitrator, and in writing request the other party to appoint an arbitrator on its behalf. The neglect or failure to make such appoint-

ment or to abide by any award or decision of the arbitrators or a majority thereof shall be deemed a breach of this contract. If the first set of arbitrators chosen shall be unable to agree, a second and, if necessary, a third shall be selected in like manner. If they fail to agree, then a justice of the Supreme Court of the United States may select three disinterested arbitrators whose award or decision shall be final.

It is understood and agreed that this contract as long as it is in good faith, observed and kept on the part of the Union Pacific Railway Company, supersedes the contracts specified in Exhibit A; but if the
56 Union Pacific Railway Company shall not keep this contract in good faith on its part, then said contracts in Exhibit A, according to their respective provisions, shall be considered and be in force, and all rights thereunder, for the purpose of the protection of the Western Union Telegraph Company. All disputes under this paragraph shall be submitted to arbitration as aforesaid. If this contract is kept by the Union Pacific Railway Company in good faith for the term of twenty-five years, then all rights under said contracts and each of them are at an end; and this contract shall not be construed as granting any easements or rights of way in or over the property of the railway company, which shall continue in existence after the said period of twenty-five years.

This agreement shall not be construed to affect any rights of the telegraph company under section 19 of the act of July 1, 1862, or under the act of July 2, 1864, entitled "An act for increased facilities of telegraph communication between the Atlantic and Pacific States and the Territory of Idaho," which rights are disputed by the railway company, and which rights during the existence of this contract, are to remain in *statu quo*, the same as if this contract had not been made, and on the termination of this contract each party hereto is remitted to its legal rights in respect thereof.

It is also agreed between the parties hereto, that if at the end of each term of ten years, commencing from date hereof, this contract in any of its provisions shall be deemed by either party hereto to work unjustly, and the parties can not agree upon its modification, then either party may have the matter of such difference submitted to the arbitrators herein provided for, whose decision in respect of such matters shall be binding upon the parties. Said arbitrators shall have no power to limit or extend the term of this contract, or do anything except to provide adequate relief in respect of the matters of specific complaint submitted to them where it shall be found to work unjustly.

In witness whereof, the parties to these presents have caused the
57 names of their respective presidents to be here subscribed, and their corporate seals to be attested, the day and year first above written.

THE WESTERN UNION TELEGRAH COMPANY,

By

President.

Secretary.

THE UNION PACIFIC RAILWAY COMPANY,

By

President.

Secretary.

EXHIBIT A REFERRED TO IN THE FOREGOING CONTRACT.

Present contracts with roads owned or controlled by the Union Pacific Railway.

Name of railroad or railway company.	Name of telegraph co.	Date of contract.
Colorado Central	W. U	Dec. 21, 1876
Denver Pacific Railroad and Tel. Co	U. S. and Mexico	Apr. 1, 1869
Denver, South Park and Pacific	W. U	Dec. 18, 1878
Junction City and Fort Kearney	"	Feb. 8, 1878
Kansas Central	"	July 31, 1878
Solomon	"	June 6, 1879
St. Joseph and Denver City	"	Aug. 10, 1871
Union Pacific, Eastern Div	"	Oct. 1, 1866
Union Pacific	Atlantic and Pacific	Sept. 1, 1869
Union Pacific	"	
Union Pacific	"	
Utah Western	W. U	
Central Branch, U. P	"	

58 EXHIBIT No. 4.

Rates of pay for communications by telegraph.

POST-OFFICE DEPARTMENT,
Washington, D. C., June 30, 1881.

Whereas, by the act of Congress approved July 21, A. D. 1866, entitled "An act to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military, and other purposes," in section second it is enacted that telegraphic communications between the several departments of the Government of the United States and their officers and agents shall, in their transmission over the lines of said companies, have priority over all other business, and shall be sent at rates to be annually fixed by the Postmaster-General:

Now, therefore, in pursuance and by virtue of the authority on me by said act conferred, I, Thomas L. James, Postmaster-General of the United States, do hereby fix the rates at which the telegraphic communications aforesaid shall be sent for the year commencing July 1, A. D. 1881, as follows, namely:

The rate for telegraphic communications sent otherwise than over circuits established by the Chief Signal Officer of the Army for the transmission of enciphered weather reports shall be as follows, viz:

One cent per word for each circuit through which it it shall be transmitted, said rate to be computed subject to the following conditions, viz:

A distance of five hundred miles, as computed by the topographer of the Post-Office Department, shall be deemed a circuit, and the shortest practicable route of the company transmitting the message shall in the cases be the basis of computation.

If, in computing circuits, there shall be found one or more circuits and a fraction of a circuit, such fraction shall be deemed a circuit.

If a communication shall be sent a distance less than 500 miles, that distance shall be deemed a circuit.

59 All words of the communication transmitted are to be counted, excepting the date and place at which such communication is filed.

All messages of less than twenty-five words, address and signature included, shall be rated as if containing twenty-five words, and all messages exceeding twenty-five words shall be rated by the exact number of words they contain, address and signature included.

Each company will be allowed to charge for messages received from another line at the same rates as if received from the Government direct for transmission over its own line.

Companies forwarding messages to another line will be entitled to compensation at established rates to the terminus of their lines at the same rates as if for messages transmitted exclusively over their own lines.

The rate for all telegraphic communications known as the Signal Service weather reports shall not exceed three cents for each word of said report for each circuit over which they may pass, in accordance with the schedule of circuits and plans of the Chief Signal Officer of the Army, which are now or may hereafter be adopted by him for transmitting these reports, or such parts thereof as he may designate, in such words or ciphers as may from time to time be directed by him. The amount thus estimated is to be taken in full payment for said reports; no additional allowance to be made for drops, office messages, or other services or special facilities required by the Chief Signal Officer for the correct and prompt transmission of said Signal Service reports.

If at any time, from competition or other cause, telegraph rates should be reduced so that a message of ten words may be sent for the public at less than that above mentioned for a twenty-five-word message, then, and in that case, this order shall be changed to meet such lower public rate; it being intended by this proviso that in no case shall the Government be compelled to pay more for a twenty-five-word message, including address and signature, than the public is required to pay for a ten-word message, exclusive of such address and signature.

60 Special rates have been filed by the American Rapid Telegraph Company for telegrams between certain points, as follows, viz: Fifteen cents for twenty words, and five cents for each additional ten words or less, addresses and signatures excluded, or twenty cents for twenty-five words, and five cents for each additional ten words or less, between the following points: Washington, Baltimore, Philadelphia, Newark, Patterson, and Trenton, N. J.; New York, Brooklyn, N. Y.; Bridgeport, New Haven, Meriden, Hartford, Conn.; Springfield, Boston, Mass., and Providence, R. I.

Telegrams sent by all other companies between these points must be at these reduced rates.

All officers of the United States Government should indorse upon official messages transmitted by them the words "Official Business," and should report to the Postmaster-General any charges in excess of the above rates.

THOMAS L. JAMES,
Postmaster-General.

TELEGRAPH COMPANIES SUBJECT TO THE PROVISIONS OF THIS ORDER.

The following is a list of telegraph companies that have filed acceptance of the provisions of the act of July 24, 1866, up to the thirtieth day of June, 1881:

1. The American Submarine Telegraph Company of New York, N. Y. Received and filed July 24, 1866.

2. The National Telegraph Company of New York, N. Y. Received and filed July 30, 1866.

3. The Globe Insulated Lines Telegraph Company of New York. Received and filed July 31, 1866.

4. International Telegraph Company of Portland, Me. Received and filed October 6, 1866.

5. The Atlantic and Pacific Telegraph Company of New York, N. Y. Received and filed March 19, 1867.

6. The Franco-American Land and Ocean Telegraph Company of New York, N. Y. Received and filed April 6, 1867.

61 7. The Globe Telegraph Company of New York. Received and filed May 30, 1867.

8. Mississippi Valley National Telegraph Company of St. Louis, Mo. Received and filed June 4, 1867.

9. Western Union Telegraph Company of New York. Received and filed June 8, 1867.

10. Northwestern Telegraph Company of Kenosha, Wis. Received and filed July 30, 1867.

11. Great Western Telegraph Company of New York. Received and filed January 17, 1868.

12. The Franklin Telegraph Company of Boston, Mass. Received and filed April 4, 1868.

13. The Insulated Lines Telegraph Company of Boston, Mass. Received and filed April 13, 1868.

14. Pacific and Atlantic Telegraph Company of Pittsburgh, Pa. Received and filed July 22, 1868.

15. The Atlantic and Pacific States Telegraph Company of Sacramento, Cal. Received and filed Sept. 7, 1868.

16. The Eastern Telegraph Company of Philadelphia, Pa. Received and filed October 5, 1868.

18. Cape May and Shore Telegraph Company, New York City. Received and filed April 2, 1869.

19. Peninsula Telegraph Company, New York City. Received and filed May 9, 1869.

20. Ocean Telegraph Company of Boston, Mass. Received and filed July 15, 1869.

21. The American Cable Company of New York. Received and filed April 15, 1870.

22. Southern and Atlantic Telegraph Company of Philadelphia, Pa. Received and filed July 22, 1870.

23. International Ocean Telegraph Company, New York City. Received and filed January 20, 1871.

24. Missouri River Telegraph Company of Sioux City, Iowa. Received and filed May 3, 1871.

25. The Marine and Inland Telegraph Company of New Jersey, 715 Locust street, Philadelphia. Received and filed November 27, 1872.

26. Atlantic and Pacific Telegraph Company of Missouri. Executive Office, 145 Broadway, New York City. Received and filed May 8, 1877.

27. New Jersey and New England Telegraph Company,
62 Received and filed November 21, 1878. Address, A. L. Worthington, No. 10 Green street, Trenton, N. J.

28. The American Rapid Telegraph Company, 41 Wall street, New York. Received and filed April 12, 1879. Special rates received and filed April 1, 1881.

29. Central Union Telegraph Company, 145 Broadway, New York. Received and filed May 9, 1879.

30. New York Land and Ocean Telegraph Company. Received and filed May 10, 1879.

31. Deseret Telegraph Company, Salt Lake City, Utah. Received and filed May 19, 1879.

32. American Union Telegraph Company of New York, 145 Broadway, New York. Received and filed June 28, 1879.

33. The American Union Telegraph Company of Missouri, Chas. S. Greeley, president, St. Louis, Mo. Received and filed July 9, 1879.

34. Wabash Railway Company, Cyrus W. Field, president, New York. Received and filed July 11, 1879.

35. The American Union Telegraph Company of New Jersey, D. H. Bates, president, Jersey City, N. J. Received and filed July 17, 1879.

36. The Baltimore and Ohio Railroad Company of Maryland, John W. Garrett, president, Baltimore, Md. Received and filed July 18, 1879.

37. The American Union Telegraph Company of Baltimore City, Md. Received and filed July 31, 1879.

38. The Deer Lodge Telegraph Company of Butte City, Mont. Received and filed August 30, 1879.

39. The American Union Telegraph Company of Pennsylvania, D. H. Bates, president, Philadelphia. Received and filed September 4, 1879.

40. The American Union Telegraph Company of Indiana, La Fayette, Ind. Received and filed Sept. 12, 1879.

41. The Cheyenne and Black Hills Telegraph Company, W. H. Hibbard, superintendent, Cheyenne, Wyoming. Received and filed November 7, 1879.

63 42. The American Union Telegraph Company of Ohio, Frank B. Swayne, president, Toledo, Ohio. Received and filed November 8, 1879.

43. The American Union Telegraph Company of Louisiana, Ed. Leloup, secretary, New Orleans, La. Received and filed March 1, 1880.

44. Baltimore and Ohio Telegraph Company of Ohio, Geo. Hoadly, president, Cincinnati, Ohio. Received and filed September 3, 1880.

45. The Wabash, St. Louis and Pacific Railway Company of St. Louis, Mo., Solon Humphreys, president, No. 80 Broadway, New York, N. Y. Received and filed September 13, 1880.

46. Baltimore and Ohio Telegraph Company of Illinois, C. H. Hudson, president, No. 81 South Clark street, Chicago, Ill. Received and filed September 23, 1880.

47. Frontier Telegraph Company of Texas, G. O. Appleby, president, Lampasas, Texas. Received and filed October 25, 1880.

48. Bankers' and Merchants' Telegraph Company of New Jersey, J. Heron Coosman, president, No. 58 Broadway, New York, N. Y. Received and filed April 21, 1881.

49. Bankers' and Merchants' Telegraph Company of New York, Wm. N. Maris, president, No. 58 Broadway, New York, N. Y. Received and filed June 8, 1881.

Rates of pay for communications by telegraph.

POST-OFFICE DEPARTMENT,
Washington, D. C., Aug. 8, 1881.

Owing to an error made in the circular issued June 30th, 1881, fixing the rates of pay for communications by telegraph, and the misunderstanding which has arisen as to the meaning of said circular, attention is called to the following:

1st. The clause in said circular referring to the special rates of the American Rapid Telegraph Company should read:

64 "A special rate has been filed by the American Rapid Telegraph Company for telegrams between certain points, as follows, viz: fifteen cents for twenty words, and five cents for each additional ten words or less, addresses and signatures excluded, between the following points: Washington, Baltimore, Philadelphia, Newark, Paterson, and Trenton, N. J., New York, Brooklyn, N. Y., Bridgeport, New Haven, Meriden, Hartford, Conn., Springfield, Boston, Mass., and Providence, R. I."

2d. All dispatches, Signal Service weather reports excepted, sent by any company between the points named above must be at this rate.

3d. The clause in the circular mentioned, which reads:

"If at any time, from competition or other cause, telegraph rates should be reduced so that a message of ten words may be sent for the public at a less rate than that above mentioned for a twenty-five word message, then, and in that case, this order shall be changed to meet such lower public rate; it being intended by this proviso that in no case shall the Government be compelled to pay more for a twenty-five word message, including address and signature, than the public is required to pay for a ten-word message, exclusive of such address and signature," must not be confounded with the clause referring to the American Rapid rate. That is to say, the twenty-word basis adopted by the American Rapid Company is substituted, so far as the points reached by its lines are concerned, for the long-established ten-word basis of other companies, and the rule that twenty-five words, including address and signature, must be sent for the Government at the same rate that ten words, exclusive of address and signature, are sent for the public, does not apply to dispatches sent between these points. The lowest rate at which any dispatch can be sent between the points reached by the American Rapid Telegraph Company, no matter how small the number of words it contains, is fifteen cents.

4th. The address and signature are not to be counted in dispatches sent between the points above named.

THOMAS L. JAMES,
Postmaster-General.

65 *Rates of pay for communications by telegraph.*

POST-OFFICE DEPARTMENT,
Washington, D. C., June 30, 1882.

Whereas by the act of Congress approved July 24, A. D. 1866, entitled "An act to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military, and other purposes," in section second it is enacted: that telegraphic communication between the several Departments of the Government of the United States and their officers and agents shall, in their transmission over the lines of said companies, have priority over all other business, and shall be sent at rates to be annually fixed by the Postmaster-General.

Now, therefore, in pursuance and by virtue of the authority on me by said act conferred, I, Timothy O. Howe, Postmaster-General of the United States, do hereby fix the rates at which the telegraphic communications aforesaid shall be sent for the year commencing July 1, A. D. 1882, as follows, namely:

The rate of all telegraphic communications, sent otherwise that over circuits established by the Chief Signal Officer of the Army for the transmission of enciphered weather reports, shall be as follows, viz:

One cent per word for each circuit through which it shall be transmitted, said rate to be computed subject to the following conditions, viz:

A distance of five hundred miles, as computed by the Topographer of the Post-Office Department, shall be deemed a circuit, and the shortest practicable route the company transmitting the message shall in all cases be the basis of computation.

If, in computing circuits, there shall be found one or more circuits and a fraction of a circuit, such fraction shall be deemed a circuit.

If a communication shall be sent a distance less than 500 miles, that distance shall be deemed a circuit.

All words of the communication transmitted are to be counted, excepting the date and place at which such communication is filed.

66 All messages of less than twenty-five words, address and signature included, shall be rated as if containing twenty-five words, and all messages exceeding twenty-five words shall be rated by the exact number of words they contain, address and signature included.

Each company will be allowed to charge for messages received from another line at the same rates as if received from the Government direct for transmission over its own line.

Companies forwarding messages to another line will be entitled to compensation at established rates to the terminus of their lines, at the same rates as if for messages transmitted exclusively over their own lines.

The rate for all telegraphic communications in cipher known as the Signal Service weather reports shall not exceed six cents for each word of said report for each circuit over which they may pass, in accordance with the schedule of circuits of plans of the Chief Signal Officer of the Army, which are now or may hereafter be adopted by him for transmitting these reports. The amount thus estimated is to be taken in full payment for said reports; no additional allowance to be made for drops or office messages.

If at any time, for competition or other cause, telegraph rates should be reduced so that a message of ten words may be sent for the public at a less rate than that above mentioned for a twenty-five-word message, then, and in that case, this order shall be changed to meet such lower public rate; it being intended by this proviso that in no case shall the Government be compelled to pay more for a twenty-five-word message, including address and signature, than the public is required to pay for a ten-word message, exclusive of such address and signature.

Special rates have been filed by the American Rapid Telegraph Company for telegrams between certain points, as follows, viz: Fifteen cents for twenty words, and five cents for each additional ten words or less, addresses and signatures excluded, between the following points:

67 Washington, D. C.; Baltimore and Conowingo, Md.; Springfield, Boston, Brighton, Great Barrington, Marlboro', North Attleboro', Waltham, and Worcester, Mass.; New York, Albany, Batavia, Amsterdam, Buffalo, Hudson, Jamestown, Little Falls, Lyons, Port Chester, Rochester, Rome, Salamanca, Schenectady, Syracuse, Troy, Utica, and Brooklyn, N. Y.; Newark, Paterson, Trenton, and Caldwell, N. J.; Philadelphia, Bedford, Bradford, Carlisle, Fannettsburgh, Franklin, Greensburgh, Harrisburgh, Lancaster, Mercer, Newburgh, Newcastle, Oil City, Pittsburgh, Titusville, Zelienople, Warren, West Chester, York, Shrewsbury, and East Liberty Stock Yards, Pa.; Pawtucket and Providence, R. I.; Hartford, Willimantic, Bridgeport, New Haven, and Meriden, Conn.

Telegrams sent by all other companies between these points must be at these reduced rates.

All officers of the United States Government should indorse upon official messages transmitted by them the words "Official business," and should report to the Postmaster-General any charges in excess of the above rates.

T. O. Howe,
Postmaster-General.

Rates of pay for communication by telegraph.

Post-Office Department,
Washington, September 4, 1884.

Whereas by the act of Congress approved July 24, 1866, entitled "An act to aid in the construction of telegraph lines and to secure to the Government the use of the same for postal, military, and other purposes," it is provided that telegraphic communications between the several Departments of the Government and their officers and agents shall, in their transmission over the lines of said companies, have priority over all other business, and shall be sent at rates to be annually fixed by the Postmaster-General; now, therefore, by virtue of the authority conferred on me by said act, I, Walter Q. Gresham, Postmaster-General of the United

68 States, do hereby fix the rates at which such communications (not including those passing over circuits established by the Chief Signal Officer of the Army) shall be sent until the close of the present fiscal year, as follows:

For day messages of not exceeding twenty (20) words, exclusive of the date, twenty (20) cents for distances within one thousand (1,000) miles,

with an additional charge of five (5) cents for every additional two hundred and fifty miles, or fraction thereof, but for no distance is the rate to exceed fifty (50) cents.

For night messages of not exceeding twenty (20) words, exclusive of date, fifteen (15) cents for all distances below two thousand miles, and for greater distances twenty-five (25) cents.

For both day and night messages an addition of one-fifth the rate is to be made for every five (5) words or fraction thereof in excess of twenty (20) words.

Provided, That in no case shall the Government be charged higher rates than the public is charged for the same service.

In computing distances the shortest practicable route of the company transmitting the message shall, in all cases, be the basis of computation.

The rate for all messages in cipher, known as the Signal Service Weather Reports, shall not exceed three (3) cents for each word sent over each circuit as now or hereafter established by the Chief Signal Officer of the Army. All messages sent over a circuit will be dropped at all designated intermediate offices therein without additional charge.

All officers of the United States should indorse upon official messages transmitted by them the words "Official business," and should report to the Postmaster-General any charge in excess of the above rates.

W. Q. GRESHAM,
Postmaster-General.

69 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms in the city of New York on Tuesday, the 16th day of December, in the year of our Lord one thousand eight hundred and ninety.

Present, the honorable E. Henry Lacombe, circuit judge.

THE UNITED STATES
vs.
WESTERN UNION TELEGRAPH COMPANY AND
The Union Pacific Railway Company.

Now comes the plaintiff, by Edward Mitchell, esq., United States attorney, its attorney, and moves the trial of this cause. Likewise come
70 Rush Taggart, esq., on behalf of the Western Union Telegraph Company, and Artemas H. Holmes on behalf of the Union Pacific Railway Company.

On consent of counsel for the respective parties,

Ordered, That the trial of the cause proceed with one juror and that the cause be tried upon an agreed statement of facts.

After hearing the argument of counsel for the respective parties the court, on the 18th inst., directs that a verdict be entered for the defendant. On motion of Edward Mitchell, esq.,

Ordered, That the plaintiff have a stay of sixty days in which to make and serve a case, with leave to turn the same into a bill of exceptions.

JOHN A. SHIELDS,
Clerk.

71 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms in the city of New York on Monday, the 16th day of February, in the year of our Lord one thousand eight hundred and ninety-one.

Present, the honorable E. Henry Lacombe, circuit judge.

THE UNITED STATES
vs.
THE WESTERN UNION TELEGRAPH COMPANY and The Union Pacific Railway Company.

The plaintiff's time in which to make and serve a case with leave to turn the same into a bill of exceptions having this day expired, now,
72 on motion of Edward Mitchell, United States attorney, attorney for the plaintiff, the attorneys for the defendants consenting, it is ordered that the plaintiff' time in which to make and serve a case with leave to turn the same into a bill of exceptions be and the same is hereby extended sixty days from this date.

E. HENRY LACOMBE.

I hereby consent to the entry of the foregoing order.

RUSH TAGGART,
Att'y for W. U. T. Co.
HOLMES & ADAMS,
Att'ys for U. P. R'y Co.

(Endorsed:) Circuit court of the United States, southern district of New York. The United States vs. The Western Union Telegraph Company, and The Union Pacific Railway Company. Consent and order extending plaintiff's time to make and serve case, &c. U. S. circuit court. Filed Feb'y 16, 1891. John A. Shields, clerk.

73 In the circuit court of the United States for the southern district of New York.

THE UNITED STATES OF AMERICA
vs.
THE WESTERN UNION TELEGRAPH COMPANY and The Union Pacific Railway Company.
Judgment.

The issues in this action having been brought on for trial before Hon. E. Henry Lacombe and a jury, at a trial term of this court, held on the 16th day of December, 1890, at the rooms of said circuit court in the post-office building in the city of New York, in said district, and the parties appearing by counsel, and the issues having been tried, and a verdict for the defendants having been duly rendered by direction of the
74 court, on the 18th day of December, 1890, now, on motion of Rush Taggart, esq., and Holmes & Adams, esqs., attorneys for said defendants, it is adjudged that said defendants have judgment against the plaintiff upon the issues in this action.

Judgment signed and entered this 25th day of March, 1891.

JOHN A. SHIELDS,
Clerk.

(Endorsed:) U. S. circuit court for the southern district of New York. The United States of America agt. The Western Union Telegraph Company and The Union Pacific Railway Company. Judgment roll. Edward Mitchell, U. S. district attorney. Holmes & Adams, attorneys for Union Pacific Railway Company. Rush Taggart and C. J. M. Gwinn, attorneys for the Western Union Telegraph Company. U. S. circuit court. Filed Mar. 25, 1891. John A. Shields, clerk.

75 United States circuit court, southern district of New York.

THE UNITED STATES OF AMERICA
against
THE WESTERN UNION TELEGRAPH COMPANY and The Union Pacific Railway Company.

PLAINTIFF'S BILL OF EXCEPTIONS.

Afterwards, to wit, on the 16th and 18th days of December, 1890, at a stated term of this court, begun and held on the 3rd Monday of October, 1890, before the Hon. E. Henry Lacombe, a circuit judge of the United States for the southern district of New York, said issue so joined as between the parties aforesaid, as by the record more fully appears, came on to be tried by a jury duly impaneled and sworn for that purpose, the plaintiff being represented by its counsel, Edward Mitchell, esq., U. S. attorney, and the defendant, The Western Union Telegraph Company, by its counsel, Rush Taggart, esq., and C. J. M. Gwinn, esq., and the defendant, The Union Pacific Railway Company, by its counsel, Artemas H. Holmes, esq.

During the course of the trial the said counsel for the plaintiff did take and allege sundry exceptions to the rulings, directions, charges, and instructions of the court and to the refusal of the court to give certain instructions and directions to the jury as then and there prayed for by it, which
76 exceptions are hereinafter severally set forth.

To maintain the issues in this action the following testimony was introduced by the plaintiff and the defendants in the form of an agreed statement of facts:

Agreed statement of facts.

I.

The Western Union Telegraph Company is a corporation of the State of New York and organized under "An act of the legislature of the State of New York entitled an act to provide for the incorporation and regulation of telegraph companies," passed on the 12th day of April, 1848, and has been such telegraph company since on or about the 8th day of April, 1851. The United States Telegraph Company was organized under the laws of the State of New York in the year 1862. The United States Extension Telegraph Company was organized under the laws of the State of New York in the year 1865. The Pacific Telegraph Company was incorporated in 1861 by special charter of the legislature of Nebraska. The California State Telegraph Company was organized as a corporation

under the laws of the State of California in the year 1861. All of said companies and all of their property are now possessed and operated by the Western Union Telegraph Company, the defendant herein.

77 II.

The Union Pacific Railroad Company was incorporated by an act of Congress, entitled "An act to aid in the construction of a railroad and telegraph line between the Missouri River and the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved on the first day of July, 1862, under which act and the act amendatory thereof of July 2, 1864, the said company in 1865 began to construct and in 1869 completed the construction of a line of railroad from Council Bluffs, Iowa, to Omaha, Nebraska; Council Bluffs, Iowa, to Ogden, Utah.

The Leavenworth, Pawnee and Western Railroad Company, a corporation of the former Territory, now State of Kansas, began in 1865 the construction of and in 1870 completed a line of railroad from Kansas City to Denver, Colorado, at which latter point it connected with the railroad of the Denver Pacific Railroad and Telegraph Company, which last-named road ran from Denver to Cheyenne. The Denver Pacific Railroad and Telegraph Company was incorporated by charter granted by the legislature of the Territory of Colorado.

In the year 1880 said three railroad companies duly consolidated their lines, property, and franchises, and formed the Union Pacific Railway Company, the defendant herein. Prior to said consolidation said Leavenworth, Pawnee and Western Railroad Company, defendant, duly changed its corporate name; first, to the Union Pacific Railway Company, Eastern Division; afterwards to the Kansas Pacific Railway Company.

The Union Pacific Railway Company, as now operated, runs from a point on the western boundary of the State of Iowa, as fixed by the President of the United States, at or near Council Bluffs, to Ogden, and from Kansas City to Denver, and Denver to Cheyenne.

Aid from the United States by bonds and land grants was given over the entire line of the railroad from a point at or near Omaha to Ogden, and from Kansas City to Boaz (a point between Kansas City and
78 Denver); and aid by land grants alone from Boaz to Denver, and from Denver to Cheyenne.

The interest on the bonds issued in aid of the road has never been reimbursed in full by the railroad company to the United States, and, if in this action the whole amount claimed by the plaintiff is recovered, there will still be a large deficit due from the railroad company on account of such interest, over and above all payments made or credits given.

It is agreed, upon the hearing of this cause, that the charters and the proceedings for the organization of said telegraph and railroad companies and their several consolidations may be read by either party to this suit, so far as the same are competent and material evidence upon the issues joined in this cause.

III.

On the 16th of June, 1860, Congress passed an act entitled "An act to facilitate communication between the Atlantic and Pacific States by electric telegraph." Under said last-named act the Pacific Telegraph Company and the California State Telegraph Company began in the year 1861, the work of construction, equipping, and putting in operation a line of telegraph from the Missouri River to San Francisco, and completed the same some time prior to the year 1863. The eastern or initial point of said line was St. Joseph, in Missouri, and thence to Omaha and thence to Salt Lake, upon substantially the route which was afterwards adopted by the Union Pacific Railway Company as the location for its line of railway between Omaha and Ogden.

In 1864 the Pacific Telegraph Company was consolidated with the Western Union Telegraph Company, and in 1867 the California State Telegraph Company was leased to the Western Union Telegraph Company, defendant herein.

At the time of the act of June 16, 1860, the Western Union Telegraph Company owned or operated lines extending from St. Joseph eastward and southward to the cities of Washington, New Orleans, New
79 York, and other principal cities of the United States. Under the 19th section of the said act of Congress of July 1st, 1862, the said Pacific Telegraph Company and the California State Telegraph Company transferred their lines from their prior location and reconstructed the same upon the right of way of the said Union Pacific Railroad Company, without an arrangement with said railroad company, as rapidly as it constructed its railroad between the point at or near Omaha and Ogden, and they or the Western Union Telegraph Company have, ever since said location of the same upon said right of way, maintained and operated the same. The Union Pacific Railroad Company, when it constructed its road, likewise constructed a separate line of telegraph along its line of railroad from the point at or near Omaha to Ogden. After the construction of said railroad and line of telegraph and on or about the first day of September, 1869, the Union Pacific Railroad Company leased its line of telegraph to the Atlantic and Pacific Telegraph Company by an agreement, and also entered into a supplementary agreement on the 20th day of December, 1871, copies of which are hereto attached, marked Exhibit No. 1, and made a part of this statement of facts. Under these agreements the Atlantic and Pacific Telegraph Company operated the said railroad company's lines of telegraph until on or about the first day of February, 1881, when the said Atlantic and Pacific Telegraph Company was consolidated with and merged in the Western Union Telegraph Company, defendant herein.

The United States Telegraph Company, prior to July 2d, 1864, had begun the construction of a line of telegraph from Wyandotte, Kansas, on the Missouri River, westward, and was constructing the same at the time the Leavenworth, Pawnee and Western Railroad Company began the construction of its railroad; and under the act of Congress entitled "An act for increased facilities for telegraph communications between the Atlantic and Pacific States and the Territory of Idaho," of July 2d, 1864,
80 the said United States Telegraph Company removed its constructed line and located the same upon the right of way of said Leaven-

worth, Pawnee and Western Railroad Company and continued to construct its line of telegraph along with the construction of the railroad of said last named railroad company. On the 27th day of February, 1866, the United States Telegraph Company transferred its telegraph lines and the right to extend the same to the Western Union Telegraph Company, which company built a line along such railroad as fast as the same was constructed, until the first of October, 1866, when a contract was entered into between the Western Union Telegraph Company and the said railroad company, under the name of the Union Pacific Railway Company, Eastern Division, a copy of which is hereto annexed, made part hereof, and marked Exhibit No. 2; and under and in pursuance of said contract the telegraph line was completed along said line to Denver, Colorado.

The said Leavenworth, Pawnee and Western Railroad Company constructed no line of telegraph along its line of railroad, but received the compensation prescribed by the several acts of Congress for the full performance by it of the conditions set forth in the acts of Congress, being land and bonds from Kansas City to Boaz, and land from Boaz to Denver.

After the said consolidation with the said Atlantic and Pacific Telegraph Company, and on or about the first day of July, 1881, the Western Union Telegraph Company and the Union Pacific Railway Company entered into an agreement, a copy of which is hereto attached, made part hereof, and marked Exhibit No. 3, being the same agreement referred to in the complaint, and under which the Western Union Telegraph Company has continued to operate the telegraph lines named in the agreement from that date down to the present time; and both parties to said contract have carried out the provisions of the same and are now doing so.

The inventory mentioned in the second paragraph of the contract between the Western Union Telegraph Co. and the Union Pacific Railroad Co. (Ex. 3 annexed) was never completed. In doing business
81 under the contract of 1881 no record was kept and it is now impossible to prove over what particular wire or wires the messages set out in the plaintiff's bill of particulars were actually transmitted, but a part were sent over what, prior to 1881, were the wires of the railroad company and the balance over the wires owned by the telegraph company.

Since the contract of 1881 the telegraph company and the railroad company have not maintained distinct offices or employed different sets of telegraph operators, except at some of the larger towns and cities, where the Western Union Telegraph Company has, in addition, established separate offices for the transaction of commercial business away from the line of the railroad, but the offices have been in common, and the same set of operators had done the work required by both the telegraph company and the railroad company.

IV.

On the 8th day of June, 1867, the Western Union Telegraph Company accepted the provisions of the act of Congress of July 24th, 1866, entitled "An act to aid in the construction of telegraph lines and to secure to the Government the use of the same for postal, military, and other purposes," now sections 5263, 5264, 5265, 5266, 5267, and 5268 of the Revised

Statutes of the United States, and filed its written acceptance of the provisions of the same with the Postmaster-General, and under the provisions of section 5266 of said Revised Statutes the Postmaster-General from time to time has fixed the rates for transmission of messages between the several departments of the Government and their officers and agents over the lines of telegraph companies subject to the provisions of said act of 1886, as shown by circulars for the years included in the account sued upon in this case, hereto attached, made a part hereof, and marked Exhibit No. 4.

82 The Atlantic and Pacific Telegraph Company, on the 19th day of March, 1867, also accepted the provisions of the act of Congress of July 24th, 1866.

The Union Pacific Railway Company has never accepted the provisions of said act of Congress of July 24th, 1866, as to its telegraph lines, but the same remain controlled by the provisions of the acts of July 1st, 1862, of July 2d, 1864, and subsequent acts amendatory and supplementary thereof.

V.

The amount of messages set out in the plaintiff's bill of particulars correctly states the date of each message therein set forth; the sender of the same, and from what point to what point the same was transmitted by the Western Union Telegraph Company; the amount collected by the Western Union Telegraph Company for the transmission of the same; the proportionate amount of the whole sum thus paid to the Western Union Telegraph Company which was for the bonded portion of the telegraph lines along the railways of the Union Pacific Railway Company, such sum being such proportionate amount of the whole amount paid as the distance along the bonded portion of the telegraph along said line or lines of railway bears to the whole distance the message was transmitted from the point of origin to the point of destination; that the compensation for each of the messages was computed and paid for as one entire service and at the then ruling rate for such entire distance fixed by the Postmaster-General of the United States, in accordance with section 5266 of the Revised Statutes of the United States; all of said messages were delivered to the Western Union Telegraph Company by the agent or officer of the Government sending the same, written upon the Western Union Telegraph Company's blanks and directed to the receiver of such message at the point of destination and without any direction to transmit the same over the bonded portion of the line of telegraph of the

83 Union Pacific Railway Company for the whole or any part of the distance; but it was known to the Western Union Telegraph Company, from the character of the said messages, that they were from one officer or agent of the Government to another. That at all the times the said messages were thus transmitted by the Western Union Telegraph Company at the rates annually fixed by the Postmaster-General of the United States; the ordinary rates, known as commercial rates, charged to other persons for transmitting like messages for the same distances was very much in excess of the rates fixed by the Postmaster-General; that the ordinary or commercial rate upon the bonded portion of the lines of telegraph situated along the lines of railway of the Union Pacific Rail-

way Company was likewise very much in excess of the rates fixed by the Postmaster-General of the United States during the period covered by the account in this action. That as to a large number of messages included in said bill of particulars and known as Signal Service reports, the same were transmitted under special arrangement and differently from other classes of messages, upon what were known as "circuits," with "drops" at all places receiving the said Signal Service reports. The method of doing said business was as follows: As many places as the Chief Signal Service Officer desired should receive the said Signal Service report were connected upon one continuous line of telegraph called a "circuit," and the said reports were then sent over this wire, and at each point where said reports were received an operator took the said reports, each of said points thus receiving the report being called a "drop," and all of said points receiving the said reports at the same time; that by reason of this method of sending reports a specially low rate was made therefor, the said rate being fixed by the Postmaster-General in the circulars issued annually, and upon the basis of amount of matter and number of drops and extent of circuits. That the circuits for the transmission of said Signal Service reports were made up between the points named in the
84 account in this action, and included intermediate points or drops in each case; that the amount sought to be recovered in this action is such proportionate amount of the whole amount paid as the distance along the bonded portion of the telegraph lines upon the said line or lines of railway bears to the whole distance over which such messages or reports were sent.

EXHIBIT No. 1.

Contract between the A. and P. Tel. Co. and the Union Pacific Railroad Company, made September 1st, 1869.

This agreement, made this 1st day of September, A. D. 1869, between the A. and Tel. Co., a corporation existing under the laws of the State of N. Y., of the first part, and the Union Pacific R. R. Co., a corporation existing under the laws of the U. S., of the second part.

Witnesseth: That the said parties in consideration of the reciprocal advantages expected to be derived by them, and of the accommodations designed to be afforded to the public by the arrangements hereby contemplated, do mutually covenant and agree as follows:

First. That the capital stock of the said party of the first part shall be increased in pursuance of the organic law and by the consent of the present stockholders thereof so as to represent ten millions of dollars in one hundred thousand shares of one hundred dollars each, of which thirty-five thousand shares (being not more than their present stock issued and contracted to be issued) shall be retained by the present stockholders and the whole increase or additional issue shall be used for the purchase of
85 property, and the extension of the line of telegraph, as hereinafter provided. Thirty-three thousand shares shall be issued and transferred to the party of the second part in consideration of the demise of their telegraphic lines, property, and good will, and of the rights and privileges in the manner hereinafter specified; and the remaining thirty-

three thousand shares shall be reserved by said A. and P. Tel. Co. for the purpose of securing either by arrangement with the Central Pacific R. R. Co., or with other corporations or persons, or otherwise establishing and realizing the necessary telegraph lines and franchises so as to complete the through line contemplated hereby.

Second. The party of the second part, in consideration of the transfer to it at the times and in the manner hereinafter set forth of said thirty-three thousand shares of stock, does hereby demise and lease to said party of the first part, all its telegraphic line, wires, poles, instruments, offices, and all other property by it possessed, appertaining to the business of telegraphing, for the purpose of sending messages and doing a general telegraphic business.

To have and to hold, for and during the whole term of the charter of the party of the first part and any renewals thereof, subject however to the rights of the U. S., set forth in the charter of the said party of the second part, and on the condition that the said party of the first part faithfully and fully perform all the duties imposed or that may be imposed upon said party of the second part by their charter or by the laws of the United States.

Third. Said party of the second part does hereby covenant to and with the party of the first part that it will proceed at once, so soon as arrangements shall have been perfected for extending said telegraph line to San Francisco, to cause two additional wires to be strung upon the poles thus demised away along the whole length of its line, and complete the same with all reasonable speed; said additional wires to be galvanized
86 wire and of not less in size than No. 9 calibre to form part of said demised premises; said wires to be fully equipped and furnished so that together with the two subsisting wires demised, as aforesaid, they may furnish sufficient capacity for the transaction of telegraphic business over the whole length of the railroad of the said party of the second part.

And said party of the second part does hereby covenant to maintain and keep in repair all said poles, wires, and equipments at their own expense during the period of said demise unless the said wires shall from age or other cause require renewal, in which event said renewal is to be made by said party of the first part.

And said party of the second part does hereby covenant that it will at its own expense employ suitable persons for and during the period of twenty-five years to operate said telegraph at stations now located or that may hereafter be required for the purpose of its railroad, except at Omaha and Promontory or such other stations as shall be found to require, for the purpose of transacting the business of both the parties, operators in addition to those needed for the business of said party of the second part, which operators at Omaha and Promontory and said other stations are to be furnished at its own expense by said party of the first part.

And said party of the second part doth further covenant that the persons employed by it as aforesaid shall faithfully and properly transact free of charge any business which may be offered to the party of the first part, and that all such business shall be transacted in accordance with the rules and regulations which may from time to time be established by the party of the first part and at such rates or tolls as may be fixed by the latter.

Fourth. Said party of the first part doth hereby covenant that the party of the second part shall have at all times the right to the constant and perpetual use of two of the four wires aforesaid for the purpose of
87 their railroad business free of expense and in preference to all others whenever so required, but when not thus required for railroad purposes the same shall be under the control of the party of the first part and subject to its use for commercial purposes.

And said party of the first part doth covenant that the said party of the second part shall at all times have the free use of the whole line of telegraph that now belongs or may hereafter belong to the said party of the first part or that may be controlled or operated by it to and from all parts of the "U. S." for all purposes connected with the management of the road or business of the party of the second part, and that in case any arrangement shall be made with the Central Pacific R. R. Co., or with any other co. or persons to extend said telegraph line to, into, or through the State of California there shall not be paid, granted, or allowed any larger portion of the stock of said parties of the first part than the portion agreed to be transferred to the party of the second part, nor any other advantages, terms, or conditions than those hereby granted to and provided for the parties of the second part as herein set forth, and that in case of any such payment, grant, or allowance the same shall be deemed to be granted to the party of the second part, in the same manner as if incorporated in and forming part of this agreement.

And it is further covenanted and agreed between the parties that all existing debts and obligations of the party of the first part for which they are liable on September 1st, 1869, shall be paid and discharged by it out of the thirty-four thousand shares of its stock retained by it as aforesaid or the proceeds thereof and that of the thirty-three thousand shares of the stock of said A. and P. Tel. Co., to be delivered to the party of the second part as aforesaid seventeen (17) thousand shares shall be transferred to Oakes Ames, esq., to be by him held in trust, and on the completion of said two additional wires by the party of the second part as herein provided, the same are by said trustee to be transferred to said party of the second part.

And the said party of the second part doth covenant to extend
88 during the term of this demise to the parties of the first part, all such preferential privileges and facilities for the prosecution of telegraphic business herein provided for, as are usually granted by R. R. companies in contracts of connection with telegraph companies.

Said party of the second part also agrees to afford to all other telegraph companies only such facilities as by law they now or may hereafter be required to afford as common carriers or otherwise, in which shall not be included the privilege of using hand cars, or of stopping trains, except at regular stations, or transporting the officers or servants of such companies, except on regular passenger trains at regular rates of fare, or of transporting materials for such co's. or persons (other than the parties of the first part), except on regular freight trains, and at the usual rates of freight, unless the facilities aforesaid or some of them shall be required by law to be afforded such companies or persons.

In testimony whereof the parties have interchangeably caused the seals of their respective companies to be affixed hereto, and to one other duplicate original thereof, and the same to be signed by their respective presidents this first day of September, anno Domini 1869.

THE ATLANTIC AND PACIFIC TELEGRAPH COMPANY.

A. & P. TEL. CO. [SEAL.] (Signed) A. F. WILMARTH, *President.*

Attest:
(Signed) ALFRED NELSON,
Acty. Secy. A. & P. Tel Co.

UNION PACIFIC R. R. CO.

UNION PACIFIC RY. CO. [SEAL.] (Signed) OLIVER AMES, *President.*

Attest:
(Signed) E. H. ROLLINS,
Secy. U. P. R. R. Co.

89 This supplementary agreement, made this 14th day of December, A. D. 1871, between the A. and P. Tel. Co., a corporation existing under the laws of the State of New York, of the first part, and the U. P. R. R. Co., a corporation existing under the laws of the United States, of the second part.

Whereas, by an agreement in writing, made and excuted by the parties hereto, bearing date the 1st day of September, A. D. 1869, the said party of the second part hereto, in the third clause of said agreement did covenant to and with the said party of the first part hereto that it would proceed to cause two additional wires to be strung upon the poles thereby demised along the whole length of its line, and complete the same with all reasonable speed, said additional wires to be galvanized wire and of not less in size than No. 9 calibre, to form part of said demised premises, said wires to be fully equipped and furnished so that together with the two subsisting wires, demised as aforesaid, they might furnish sufficient capacity for the transaction of telegraphic business over the whole length of the railroad of the said party of the second part; and did further agree in the same clause that of the thirty-three thousand shares of the stock of said A. and P. Tel. Co. to be delivered to the party of the second part hereto, as aforesaid, seventeen thousand shares should be transferred to Oakes Ames, esq., to be by him held in trust, and on the completion of said two additional wires by the party of the second part hereto, as therein provided, the same were by said trustee to be transferred to said party of the second part.

And whereas the said parties hereto and to the said original agreement have concluded to modify the said contract by abrogating and surrendering the obligation of the said party of the second part to cause two additional wires to be strung upon the poles by the said original agreement demised, and the said party of the second part in consideration of such abrogation and surrender has agreed to relinquish unto the said party of the
90 first part the seventeen thousand shares of stock so held in trust by the said Oakes Ames, upon having eighteen hundred shares of

stock of said A. and P. Tel. Co. returned to them with the understanding that said eighteen hundred shares shall be an equivalent for the release of the said party of the first part from the obligation to pay the debt which existed before the execution of the said original contract, and have further agreed that the party of the first part may use and apply for the same purposes to which the said seventeen thousand shares are to be applied by the said party of the first part, one thousand shares out of the thirty-three thousand shares, which by the said agreement were to be reserved for the purpose of securing either by arrangement with the Central Pacific R. R. Co., or with other corporations or persons or otherwise establishing and realizing the necessary telegraph lines and franchises so as to complete the through line to San Francisco, California, contemplated by said agreement.

Now, therefore, this supplementary agreement witnesseth:

That said parties in consideration of the reciprocal advantages to be derived by them do hereby covenant and agree as follows:

First. That the said party of the second part shall, and hereby does, relinquish and resign unto the said party of the first part all right, title, claim, and interest which the said party of the second part, if this relinquishment were not made, might now or at any time hereafter have to the whole, or any part, of the said seventeen (17) thousand shares of the stock of said A. and P. Tel. Co., so held in trust by the said Oakes Ames, and doth hereby irrevocably consent that the said Oakes Ames shall forthwith transfer and deliver all of the seventeen thousand shares of stock to be sold or disposed of by Jno. Duff, esq., as trustee for the parties mutually (or in case of his death or resignation, then of such other substituted trustee or trustee as may be agreed upon by them) and the proceeds
91 applied to the payment of its debts without distinction as to whether the same were contracted before or after the execution of the said original contract and the extension and improvement of its lines, wires, or routes, and doth also consent that the said party of the first part may use and apply to the same purposes one thousand of the thirty-three thousand shares so reserved as aforesaid, for the purpose of accomplishing and realizing the said through line to San Francisco; and doth also hereby and in consideration of the surrender of the said eighteen hundred shares of stock agree to and hereby does relinquish and cancel the obligation of the said party of the first part, to pay off and discharge out of its separate means the debt which existed and arose prior to the execution of the said original contract between the parties hereto.

Second. And the said party of the first part, in consideration of the foregoing release and relinquish, doth hereby transfer unto the said party of the second part eighteen hundred shares of stock of the said A. and P. Tel. Co., and doth also fully release and cancel all the obligations of the said party of the second part to cause two additional wires to be strung upon the poles by the said contract hereinbefore mentioned demised along the whole length of the line of the said U. P. R. R. Co., and to complete the same with all reasonable speed.

Third. And it is specially agreed by the parties hereto that nothing herein contained shall in anywise effect, modify, or impair the said original contract except in the respects hereinbefore and hereinafter specially stated; that in all other respects not hereinbefore or hereinafter indicated the said contract shall remain in full force and effect.

But is further agreed that for all the purposes of said original contract and of this supplementary contract, the road of the party of the second part demised by said original contract shall be deemed and taken to terminate at the junction of the U. P. R. R. Co., with the Central Pacific R. R. Co., as now established, which junction is at a point about five
92 miles west of Ogden, and all the rights of the parties under said contract and supplement shall be made to conform to this modification.

And it is further agreed between the parties that whereas by the original contract the parties to the second part were to have the right to the constant and perpetual use of two of the four wires herein contemplated, in perference to all others, whenever required for the purpose of their R. R. business, said provision shall be and is hereby modified and changed so that the rights of the party of the second part in preference to others to use said telegraph for the purposes of their R. R. business shall be limited to one only of the subsisting telegraph wires, which it is contemplated shall be the only wires employed in the business.

It is further understood and agreed between the respective parties hereto that in case one of the two wires now in use on the poles of the said U. P. R. R. Co. be down or otherwise obstructed, then and in that case the first and preferred use of the remaining wire is conceded to the said R. R. Co. for transmission of its own business, it being understood that the business of the A. and P. Tel. Co. shall be forwarded immediately thereafter.

In witness whereof the parties hereto have caused these presents to be executed by their respective presidents and attested by their respective secretaries, and their respective corporate seals to be hereunto affixed the day and year first above written.

THE ATLANTIC AND PACIFIC TEL. CO.,
(Signed) By WM. H. GUION, *Vice Prest.* [SEAL.]

Sealed and delivered in the presence of
(Signed) JOHN DONNELLY.

Attest:
(Signed) ALFRED NELSON,
Secretary A. and P. Tel. Co.
THE UNION PACIFIC R. R. CO.,
(Signed) By JOHN DUFF, *Vice-Prest.* [SEAL.]
Attest:
E. H. ROLLINS,
Secy. U. P. R. R. Co.

93 EXHIBIT NO. 2.

This agreement made and entered into by and between the Union Pacific Railway Company, eastern division of Kansas, and the Western Union Telegraph Company hereinafter designated respectfully as the railway company and the telegraph company,

Witnesseth: That for and in consideration of the covenants and agreements herein contained, the parties hereto have mutually agreed as follows, viz:

First. The railway co. agree to pay to the telegraph company the cost of the telegraph poles which have been erected along the railway company's

road between Wyandotte and Fort Riley, except for such as have been already furnished and erected by said railway company, and also to pay the cost of the wire and insulators for a telegraph line with one wire between said points, except for such portion of the distance as the railway company has already provided the wire and insulators. Payment for such poles, wire, and insulators to be made to the treasurer of the telegraph company upon presentation by the latter of the account therefor duly verified, and no claims shall be made by said telegraph company for messages transmitted previous to the date of this contract, or by the said railway company for transportation of men or material for said telegraph company prior to same date.

Second. The railway company agree to furnish and distribute along their road, west of Fort Riley, as fast as the same is completed, suitable poles for a first-class telegraph line, the dimensions and quality thereof, as well as the number per mile to be determined by the telegraph company; and also to furnish wire and insulators for a line of telegraph with one wire. Provided, however, that if the railway company shall elect to have the telegraph company furnish said poles, wire, and insulators, they shall be so furnished as fast as each section of twenty (20) miles of said
94 railway shall be completed, and the cost thereof not including the expense of erecting the poles, attaching the insulators, and stringing the wire, shall be paid monthly to the telegraph company as provided in the section next preceding (first).

Third. The railway company agrees to supply and distribute like suitable telegraph poles as they shall be required from time to time hereafter, to repair and renew the line when the same shall be necessary, and in case of neglect to so furnish any such poles when the same shall be necessary, the telegraph company may procure the same at the cost of the railway company payable as hereinbefore provided.

Fourth. The railway company agrees to transport free of charge to the telegraph company all persons engaged in and materials required for the construction, reconstruction, working, repairing, and maintaining said telegraph line. Also to furnish a suitable telegraph office in the depot at Wyandotte, Kansas, free of charge, and to pay one-half the salary of the operator in said office, so long as same shall be necessary to save telegraph company from loss at said office or such less amount as may be sufficient to prevent such loss. The said telegraph company to pay the remainder of said salary. Said operator is to be fully qualified and is to do the railway company's business, and it is to be appointed, and his salary fixed by the parties to this contract.

Fifth. The railway company agree not to transport any persons engaged in or property intended for the construction or repairs of any other line of telegraph along their railway except at the usual and regular rates charged by said railway company for passengers and freights, nor give permission to or make any agreement with any other telegraph company to construct or operate any telegraph line upon the lands or roadway of said railway company without the consent in writing of the telegraph company. The above agreed to by said railway company so far as it has the legal rights and power to do so.

95 The telegraph company agrees:

First. To erect the poles, attach the insulators and string the wire to be furnished or paid for by the railway company as hereinbefore pro-

vided in article second of the stipulations by said railway company as fast as each section of 20 miles of the said railway shall be completed and in the manner required for a first-class telegraph line, and so as to be accepted by the Government commissioners. Such poles to be put up subject to approval of chief engineer of said railroad company.

Second. That the first wire shall belong to the railway company and be for their use exclusively after a second wire is put up, but no commercial or paid business shall be transmitted by the railway company from any station where the telegraph company shall have an office without the consent of the latter.

Third. If the business of the railway company shall in their opinion at any time hereafter require the use of more than one wire, they shall have the right to appropriate any other wire on paying to the telegraph company the cost of said wire on the poles, and said telegraph company agree to attach said other wire for this purpose in accordance with this contract if the same shall at that time be attached.

Fourth. The business of said railway, including its construction lands, and all business of the company, and the family, private, and social messages of the executive officers shall be transmitted without charge between all telegraph stations on the line of the said railway and also between all such stations and the city of St. Louis, Missouri, and over all other lines in Missouri, Kansas, Colorado, and New Mexico now owned or controlled or that may hereafter be owned or controlled by the Western Union Telegraph Company, provided, as far as said lines in Colorado and New Mexico are concerned, the said road or roads of the Union Pacific Railway Company, Eastern Division, shall at the time be in process
96 of construction towards Santa Fe or Denver, or both, and all such business shall be transmitted free of charge over all other lines owned or controlled or that may hereafter be owned or controlled by the telegraph company within the United States to an amount not exceeding the rate of four thousand dollars per annum, and for any excess above such rate the telegraph company will deduct and rebate one-half the regular tariff charges, settlements and payments for such excess to be made yearly.

Fifth. Until a second wire is put up as hereinafter provided both the parties hereto may use the first wire, but the business of the railway company shall have precedence, and thereafter, in case either wire is interrupted or is required by the United States, the business of both the parties hereto shall be done upon the other as far as practicable, but without delay or charge to the railway company.

Sixth. The telegraph company shall indemnify the railway company against all claims of their agents for damages to persons or property by accident or otherwise who may travel free over said railway under orders of the telegraph company, and shall not be accountable to said railway company for the consequences of any error which may arise in the transmission or delivery of messages for said railway company, or its officers or agents, and will also give and defend the right to use such instrument now or hereafter to be patented during the first life of such patents, and the renewals thereof as are necessary for the efficient working of said line by the railway company.

Seventh. It is further mutually agreed by and between the parties thereto that the telegraph company is to furnish all main batteries required

for the efficient working of the telegraph line herein provided for, and is to keep the line in good working order without expense to the railway company, except for the materials which the latter has hereinbefore agreed to supply.

97 Eighth. The railway company may establish at their own expense as many offices as they require, and at all the places where the telegraph company have not separate office, the employees of the railway company shall, so long as it may not interfere with the business of said railway company, receive, transmit, and deliver such commercial or paid business as may be offered at the tariff rates of the telegraph company, provided such paid business does not amount to enough to pay the expenses of a separate telegraph office, and shall account for and pay over to the latter monthly the amount thereof at such rates; and concerning such business, all rules, regulations, and orders of the telegraph company applicable thereto shall be observed, but said railway company shall not be amenable in any way to said telegraph company for the acts or operations of said agents otherwise than to remedy the difficulty in future.

Ninth. The telegraph company shall have the right to add as many wires to the lines herein referred to as shall be necessary for the transmission of their own business, but without expense to or interference with the working of the wires of the railway company, and the said railway company shall have the same rights.

Tenth. The telegraph company agrees to perform, without charge, for the railway company what shall be decided by competent authority to be its telegraph obligations to the Government of the United States.

Eleventh. That a line of telegraph be constructed on said railway company's road from Leavenworth, Kansas, to Lawrence, Kansas, at such time between May thirty-first, eighteen hundred and sixty-seven, and September first, eighteen hundred and sixty-eight, as the railway company may decide, and on the same terms and conditions as that west of Fort Riley, as hereinbefore stated.

98 This agreement shall be and continue in force for and during the full term of twenty-five years from the first day of October, one thousand eight hundred and sixty-six, and until one year's notice of its expiration shall have been given by one of the parties hereto. And in case of any disagreements concerning the true intent and meaning of any of the provisions herein contained, the subject of such difference shall be referred to arbiters to be chosen, one by each party, and a third by the two thus chosen, and the decision of such arbiters or a majority thereof shall be final and conclusive.

In witness whereof the party to these presents have caused the names of their respective presidents to be subscribed and the corporate seals to be affixed, duly attested, this 1st day of October, 1866.

(SEAL.) (U. P. Ry. Co.)

(Signed) JOHN D. PERRY,
President Union Pacific Railway Co., E. D.

(E. D.) Attest:
(Signed) CHAS. B. LAMBORN,
Sec'y.

(SEAL.) (W. U. Co.)

(Signed) HIRAM SIBLEY,
Vice-President Western Union Telegraph Co.

(Signed) O. H. PALMER,
Sec'y W. U. T. Co.

OFFICE MISSOURI & WESTERN TELEGRAPH CO.,
St. Louis, Mo., October 1st, 1866.

The provisions of the foregoing contract between the Union Pacific Railway Company, Eastern Division of Kansas, and the Western Union Telegraph Company are fully assented to so far as they relate either to the territory or business of this company.

(Signed) R. C. CLOWRY,
President Missouri & Western Telegraph Co.

SEAL. Mo. & Westn. Tel. Co.

(Signed) O. H. PALMER,
Secretary Missouri & Western Telegraph Co

99 EXHIBIT No. 3.

This agreement, made and entered into this 1st day of July, 1881, by and between the Western Union Telegraph Company and the Union Pacific Railway Company, hereinafter respectively designated for convenience as the telegraph company and the railway company, witnesseth:

That whereas the Western Union Telegraph Company has acquired all of the property, rights, and franchises of the Atlantic and Pacific Telegraph Company, and is also in possession of and operates a separate line of poles and wires along said main line of road of the railway company between Omaha and Ogden;

Whereas the parties hereto are now and for some time past have been operating lines of telegraph along the various railroads of the railway company, under sundry contracts referred to in Exhibit "A" hereto attached, made between the said railway company or companies formerly in possession of lines of railroad now controlled by or forming part of the lines of railroad of said railway company, and the Western Union Telegraph Company, or other telegraph companies which have since, by purchase or consolidation, become merged into the said Western Union Telegraph Company, a schedule of said contracts being hereto annexed and marked "Exhibit A;" and

Whereas disputes have arisen and exist between the parties hereto, and various suits are pending between them; and

Whereas it is desirable to terminate, as far as practicable, existing disputes and litigations, and to embody in one new contract the agreement of the parties, which new contract is in lieu of said existing contracts referred to in Exhibit "A," to the extent and for the purposes hereinafter defined;

100 Now, therefore, for the purpose of providing telegraphic facilities for the parties hereto, and of maintaining and operating the lines of telegraph along the railroad company's railroads in the most economical manner in the interest of both parties and for the purpose of fulfilling the obligations of the railway company to the Government of the United States and the public in respect to the telegraphic service required by the act of Congress of July 1st, 1862, and the amendments thereto, and in consideration of the covenants and agreements herein contained, the parties hereto have mutually agreed as follows:

First. Each party hereto hereby releases and discharges the other from all claims, debts, liabilities, and demands of whatever nature arising and accruing under any and all said contracts and agreements up to this date

or otherwise between the parties hereto or their respective predecessors, and all pending suits are to be dismissed without prejudice, and each party to pay its own costs.

Second. In order to define as nearly as practicable the exact ownership of the telegraph property as it now exists on and along the various railroads and in the various offices of the railway company, a full and complete inventory shall immediately upon the execution of this agreement be made out by two appraisers, one to be appointed by each party hereto; and said inventory shall show in detail all of the telegraph property belonging to each party hereto separately; and also all of the telegraph property owned jointly by the parties hereto, and all of the telegraph property the ownership of which is now disputed; and after said inventory shall have been agreed upon between and signed by the parties hereto, a copy of said inventory, duly certified by said appraisers, shall be filed with each party's copy of this agreement.

Upon the termination of this agreement, as hereinafter provided, in case the parties hereto shall not be able to agree upon a division of or other settlement for the property, the ownership of which is in
101 dispute, then the final disposition of such property shall be referred to and decided by arbitrators chosen in the manner hereinafter provided.

Third. The railway company, so far as it legally may, hereby grants and agrees to assure to the telegraph company, the exclusive right of way on, along, upon, and under the line, lands, and bridges of the railway company and any extensions and branches thereof, for the construction, maintenance, operation, and use of lines of poles and wires, or either of them, or underground or other system of communication for commercial or public uses or business with the right to put up from time to time or cause to be put up or constructed under the provisions of this agreement such additional wires on its own or the railway company's poles or such additional lines of poles and wires or either as well on its bridges as on its right of way, or to construct such underground lines as the telegraph company may deem expedient, doing as little damage and causing as little inconvenience to the railway company as is practicable, and the railway company will not transport men or material for the construction or operation of a line of poles and wire or wires or underground or other system of communication in competition with the lines of the telegraph company party thereto, except at and for the railway company's regular local rates, nor will it furnish for any competing line any facilities or assistance that it may lawfully withhold, nor stop its trains, nor distribute material therefor at any other than regular stations.

Provided, always, that in protecting and defending the exclusive rights given by this contract, the telegraph company may use and proceed in the name of the railway company, but shall indemnify and save harmless the railway company from any and all damages, costs, charges, and legal expenses incurred therein or thereby.

Fourth. It is mutually understood and agreed that all of the
102 telegraph lines and wires covered by this contract, whether belonging to or used by the telegraph company or the railway company for the purposes of this contract as herein provided, shall form part of the general system of the telegraph company.

The railway company further agrees that its employees shall transmit over the lines owned, controlled, or operated by the parties hereto all commercial telegraph business offered at the railway company's offices, and shall account to the telegraph company exclusively for all of such business and the receipts thereon, as provided herein.

No employee of the railway company shall, while in its service, be employed by or have any connection with any other telegraph company than the telegraph company party hereto, and the telegraph company shall have the exclusive right to the occupancy of and connection with the railway company's depots or station-houses for commercial or public telegraph purposes as against any other telegraph company.

Provided that if any person or party, or any officer of the Government, tender a message for transmission over the railway telegraph lines between Council Bluffs and Ogden at any railway telegraph station between those points and require that the service be rendered by the railway company, the operator to whom the same is tendered shall receive and forward the same accordingly at rates to be fixed by the railway company to the point of destination if not beyond its own lines.

If the destination of such message be beyond said railway company's lines, the telegraph company when receiving the same at the point at which it leaves the said railway lines may demand the prepayment of tolls for the service of farwarding the message on its own lines.

Provided, however, that the local receipts of the railway company on such messages shall be divided between the parties hereto in the same manner and subject to the same conditions as provided in the 10th clause of this agreement.

Fifth. The railway company agrees to furnish at its own expense
103 all the labor except a foreman for the maintenance, repair, and renewal or reconstruction of the existing lines and wires along all of the railway company's railroads, and for the construction, maintenance, repair, and renewal or reconstruction of such additional wires or lines of poles and wires as may be required for commercial or railroad telegraph purposes along said railroads and along future branches and extensions thereof, and along new railroads constructed or acquired by the railway company, except as modified in the sixth clause hereof.

The telegraph company shall furnish a foreman skilled in the work of telegraph construction who shall have charge of the construction and reconstruction of the lines and wires and the direction of the labor furnished by the railway company for such purposes, said foreman to be subordinate to the superintendent mentioned in article twelfth of this agreement.

Sixth. Each party hereto shall pay one-half of the entire cost of all poles, wire, insulators, tools, and other material used for the maintenance, repair, and renewal or reconstruction of existing lines and wires along all of the railway company's railroads, and for the construction, maintenance, repair, and renewal or reconstruction of such additional wires or lines of poles and wires as may be required for commercial or railroad telegraph purposes along said railroads and along future branches or extensions thereof, and along new railroad constructed or acquired by the railway company until the total number of wires shall amount to three for the exclusive use of each party hereto, between Council Bluffs and Ogden;

two for the exclusive use of each party hereto between Kansas City and Denver; and one for the exclusive use of each party hereto on all other portions of the railway company's railroads, branches, and extensions.

Each party hereto shall pay the entire cost of the construction, maintenance, repair, and renewal or reconstruction of wires for its exclusive use in excess of the number hereinbefore mentioned. The material of
104 the telegraph company for additional wires to be transported free of charge by the railway company over its own lines, as hereinafter provided.

The telegraph company agrees to furnish at its own expense all blanks and stationery for commercial or public telegraph business, and all instruments, main and local batteries, and battery material for the operation of its own and the railway company's wires and offices. The telegraph company shall maintain the main batteries in good working order, but if said batteries are at places where the telegraph company has no batteryman or other employee who can attend to the same, in such cases the railway company's employees shall keep said batteries in good working order if any of such employees at such place are competent to do it.

Seventh. Each party hereto shall have the exclusive use under the division of the cost of material hereinbefore provided of not exceeding three wires between Council Bluffs, Iowa, and Ogden, Utah, and not exceeding two wires between Kansas City, Mo., and Denver, Col., and not exceeding one wire on all other portions of the railway company's railroads; provided, however, that in case either party hereto shall require additional wires between said places hereinbefore mentioned, or along any of the other railroads of the railway company, the party requiring such additional wire or wires shall furnish at its own expense all material for the construction, maintenance, repair, and renewal or reconstruction of such additional wire or wires.

The telegraph company agrees to furnish, free of charge, for the railroad business of the railway company, a direct wire connecting the railway company's office in Omaha, Nebraska, with its office in Kansas City, Mo., and with the railway company's offices at intermediate railroad stations of the railway company along the Missouri River, including Council Bluffs; and the telegraph company will receive, transmit, and deliver, free of charge, at and from its offices at said intermediate stations of the
105 railway company, such messages on the railroad business of the railway company as may be offered by its agents and officers for points on the railway company's roads, provided that the telegraph company may use said wire for the transaction of commercial or public telegraph business when not in use for railroad business.

Eighth. All messages of the officers and agents of the railway company pertaining to its railroad business may be transmitted, free of charge, between all telegraph stations on the lines of its various railroads over wires set apart for railroad business.

The telegraph company agrees to issue to such officers of the railway company as may be designated by the president or general superintendent thereof annual franks authorizing the free transmission over any of the lines of the telegraph company in the United States of messages relating strictly to the railroad or corporate business of the railway company to or from points beyond or off the line of the railway company's railroads, to

an amount not exceeding twenty-five thousand dollars ($25,000.00) per annum for the first three thousand four hundred (3,400) miles of railroad owned or controlled and operated by the railway company, and occupied by a telegraph line erected thereon, and operated under the provisions of this agreement, and six dollars ($6) per annum additional for each additional mile of railroad owned or controlled and operated by the railway company and occupied as aforesaid.

The tolls on all of such messages to or from points beyond or off the line of said railroads shall be calculated at the regular commercial day rates of the telegraph company between the points at which such messages are delivered to the telegraph company and the points to which they may be destined, provided, however, that if any such messages be delivered to the telegraph company at any place other than the place at which such messages originate, they shall be transmitted over railroad wires and handled by railroad employees entirely until delivered to the telegraph company. And the railway company agrees to pay to the
106 telegraph company one-half of its aforesaid rates on all such messages in excess of said above-mentioned amount, settlements to be made yearly.

It is understood and agreed that the free telegraphic service herein provided for is for the transmission of messages concerning the operation and business of the railway company's railroads, and shall not be extended to messages ordering sleeping car, parlor car, or steamer berths or other accommodations for customers of the railway company, the tolls on which messages should properly be chargeable to such customers.

Ninth. The railway company agrees to transport free of charge over its railroads, upon application of the superintendent or other officer of the telegraph company, all officers of the telegraph company when traveling on its business, and all employés of the telegraph company, when traveling on the telegraph company's business connected with or pertaining to the lines or wires and offices along any of the railway company's railroads. And the railway company further agrees to transport and distribute free of charge along the line of any or all of its railroads all poles and other materials for the construction, maintenance, operation, repair, or reconstruction of the lines and wires covered by this agreement, and of such additional wires or lines of poles and wires as may be erected under and in pursuance of the provisions of this agreement; also all material and supplies for the establishment, maintenance, and operation of the offices along said railroads, it being understood that no charge shall be made for the transportation of poles or other materials over any of the railway company's railroads for use on any other of its railroads.

Tenth. The telegraph company agrees to supply instruments and local batteries and blanks and stationery for commercial telegraph business as hereinbefore provided at offices established and maintained by the railway company. At all telegraph stations of the railway company
107 its employees shall receive, transmit, and deliver such commercial or public messages as may be offered and shall render to the telegraph company monthly statements of such business, and full accounts of all receipts therefrom, and the railway company shall cause all of such receipts to be paid over to the telegraph company monthly.

As compensation to the railway company for the services herein provided for, the telegraph company agrees to pay or return to the railway company

monthly one-half of the cash receipts at telegraph stations maintained and operated by and at the expense of the railway company, tolls on ocean cable messages and tolls for lines of other companies excepted, all of which shall be retained by the telegraph company, it being understood that the railway company shall not be entitled to any portion of the tolls on ocean cable messages or tolls belonging to lines of other companies or to any portion of amounts checked against other offices.

And the employees of the railway company shall not, without the consent of the telegraph company, transmit over said telegraph lines any free messages except those provided for herein.

Either party hereto may maintain telegraph offices at places on said railroads where it now has offices, and either party may establish and maintain offices at such other places on said railroads as it may elect: provided, however, that the telegraph company shall not establish any new office independent of the railway company's office, at any point on said railroads, within one mile of an office which may have been previously established by the railway company unless the railway company shall consent thereto; but the telegraph company may establish and maintain branch offices wherever it may elect so to do in cities or towns on or along said railroads where it may now have independent offices.

It is understood and agreed that so long as the commercial telegraph business of places where the telegraph company has no independent offices and where offices are maintained by the railway company at its
108 railroad stations, is confined within one mile of such railroad stations, and is performed satisfactorily, the telegraph company shall not open an independent office within one mile of such stations; but in case the commercial business at any such railroad station should not be transacted to the reasonable satisfaction of the public, and if the telegraph company shall seek to establish an independent office at such place within one mile of the railroad station, and the railway company should object thereto, then the question shall be decided by arbitration as hereinafter provided.

The railway company agrees that its employees shall not compete with the telegraph company's offices in the transaction of commercial telegraph business at any point where the telegraph company may now or hereafter have an office separate from the railway company's office, by cutting rates or by active efforts to divert business from the telegraph company.

Eleventh. It is a condition of this contract that the railway company is not to be responsible for and the said telegraph company hereby covenants and agrees to save the said railway company harmless and indemnify it against any loss or damages of any kind arising from any injury to persons in the employ of or property belonging to said telegraph company, while being carried free over said roads under this agreement, or from any neglect or failure in the transmission or delivery of messages for any person doing business with said telegraph company, or on account of any other public or commercial telegraph business for which said railway company is to account under Article Tenth hereof and said telegraph company shall not be responsible for and the railway company agrees to indemnify and save harmless the telegraph company against any loss or damages of any kind arising from or on account of any error or failure in the transmission or delivery of messages sent for said railway company under this agreement.

109 Twelfth. It is further agreed that the management of the wires, the repairs of all the lines along the railway company's railroad and the distribution of all materials for use on said lines shall be under the supervision and control of a competent superintendent, who shall be appointed and paid jointly by the parties hereto, and whose salary shall be fixed by mutual agreement, and said superintendent shall be equally the servant of each of the parties hereto and shall as far as practicable protect and harmonize the interest of both parties hereto in the transaction of the railroad and commercial telegraph business along the railway company's railroad.

Said superintendent shall be subordinate to and under the control of the superintendents of both parties hereto in the management, repair, reconstruction, maintenance and operation of the lines and wires and the distribution of material therefor, and shall cooperate with both parties hereto in giving the utmost efficiency to the transaction of the railroad and commercial telegraph business and the working of the lines and wires on said railroads.

Said superintendent may be removed by either party hereto, but his successor shall not be appointed without the consent of both parties hereto.

Thirteenth. The railway company shall have the right to the free use of the telegraph patent rights or new discoveries or inventions that the telegraph company now owns and uses in its general business or which it may hereafter own and use as aforesaid, so far as the same may be necessary to properly carry on the business of railroad telegraphing on the line of said railroads as provided for herein.

Fourteenth. The telegraph company hereby promises and agrees to assume and protect the railway company from the payment of all taxes levied and assessed upon the telegraph property belonging to either of the parties to this agreement.

110 Fifteenth. The provisions of this agreement shall extend to all railroads and branches or extensions thereof now or hereafter owned or controlled by the railway company: provided, however, that in case the railway company shall hereafter acquire the ownership or control of any railroad upon which the telegraph company may already have a line of telegraph in operation the provisions of this contract shall not apply to such railroad and telegraph line without the mutual consent of the parties hereto at the time of such acquisition.

The provisions of this contract shall be and continue in force for and during the term of twenty-five (25) years from the date hereof, and unless one (1) year's written notice next prior to the expiration of said term is given, this contract will continue in force thereafter until one (1) year's written notice shall have been given by one of the parties hereto of its intention to terminate the same.

In case of any disagreement concerning the true intent and meaning of any of the provisions of this contract, the subject of such indifference shall be referred to three arbitrators, one to be chosen by each party hereto, and the third by the two others chosen, and the decision of such arbitrators, or of a majority thereof, shall be final and conclusive.

In case of any such disagreement arising, either party may appoint in writing an arbitrator, and in writing request the other party to appoint an arbitrator on its behalf. The neglect or failure to make such appointment

or to abide by any award or decision of the arbitrators or a majority thereof shall be deemed a breach of this contract. If the first set of arbitrators chosen shall be unable to agree, a second and, if necessary, a third shall be selected in like manner. If they fail to agree, then a justice of the Supreme Court of the United States may select three disinterested arbitrators, whose award or decision shall be final.

It is understood and agreed that this contract as long as it is, in good faith, observed and kept on the part of the Union Pacific Railway Company, supersedes the contracts specified in Exhibit A; but if the
111 Union Pacific Railway Company shall not keep this contract in good faith on its part, then said contracts in Exhibit A, according to their respective provisions, shall be considered and be in force, and all rights thereunder, for the purpose of the protection of the Western Union Telegraph Company. All disputes under this paragraph shall be submitted to arbitration, as aforesaid. If this contract is kept by the Union Pacific Railway Company in good faith for the term of twenty-five years, then all rights under said contracts and each of them are at an end; and this contract shall not be construed as granting any easements or rights of way in or over the property of the railway company, which shall continue in existence after the said period of twenty-five years.

This agreement shall not be construed to affect any rights of the telegraph company under section 19 of the act of July 1, 1862, or under the act of July 2, 1864, entitled "An act for increased facilities of telegraph communication between the Atlantic and Pacific States and the Territory of Idaho," which rights are disputed by the railway company and which rights, during the existence of this contract, are to remain in statu quo the same as if this contract had not been made, and on the termination of this contract each party hereto is remitted to its legal rights in respect thereof.

It is also agreed between the parties hereto that if at the end of each term of ten years, commencing from date hereof, this contract in any of its provisions shall be deemed by either party hereto to work unjustly and the parties can not agree upon its modification, then either party may have the matter of such difference submitted to the arbitrators herein provided for, whose decision in respect of such matters shall be binding upon the parties. Said arbitrators shall have no power to limit or extend the term of this contract or do anything except to provide adequate relief in respect of the matters of specific complaint submitted to them where it shall be found to work unjustly.

In witness whereof the parties to these presents have caused the
112 names of their respective presidents to be here subscribed and their corporate seals to be attested the day and year first above written.

THE WESTERN UNION TELEGRAPH COMPANY,

By

President.

Secretary.

THE UNION PACIFIC RAILWAY COMPANY,

By

President.

Secretary.

EXHIBIT A, REFERRED TO IN THE FOREGOING CONTRACT.

Present contracts with roads owned or controlled by the Union Pacific Railway.

Name of railroad or railway company.	Name of telegraph co.	Date of contract.
Colorado Central	W. U	Dec. 21, 1876
Denver Pacific Railroad and Tel. Co	U. S. and Mexico	Apr. 1, 1869
Denver, South Park and Pacific	W. U	Dec. 18, 1878
Junction City and Fort Kearney	"	Feb. 8, 1878
Kansas Central	"	July 31, 1878
Solomon	"	June 6, 1879
St. Joseph and Denver City	"	Aug. 10, 1871
Union Pacific, Eastern Div	"	Oct. 1, 1866
Union Pacific	Atlantic and Pacific	Sept. 1, 1869
Union Pacific	"	
Union Pacific	"	
Utah Western	W. U	
Central Branch U. P	"	

113 EXHIBIT No. 4.

Rates of pay for communications by telegraph.

POST-OFFICE DEPARTMENT,
Washington, D. C., June 30, 1881.

Whereas, by the act of Congress approved July 21, A. D. 1866, entitled "An act to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military, and other purposes," in section second it is enacted: That telegraphic communications between the several departments of the Government of the United States and their officers and agents shall, in their transmission over the lines of said companies, have priority over all other business and shall be sent at rates to be annually fixed by the Postmaster-General.

Now, therefore, in pursuance and by virtue of the authority on me by said act conferred, I, Thomas L. James, Postmaster-General of the United States, do hereby fix the rates at which the telegraphic communications aforesaid shall be sent for the year commencing July 1, A. D. 1881, as follows, namely:

The rate for telegraphic communications sent otherwise than over circuits established by the Chief Signal Officer of the Army for the transmission of enciphered weather reports shall be as follows, viz:

One cent per word for each circuit through which it shall be transmitted, said rate to be computed subject to the following conditions, viz:

A distance of five hundred miles, as computed by the topographer of the Post-Office Department, shall be deemed a circuit, and the shortest practicable route of the company transmitting the message shall in the cases be the basis of computation.

If, in computing circuits, there shall be found one or more circuits and a fraction of a circuit, such fraction shall be deemed a circuit.

If a communication shall be sent a distance less than 500 miles that distance shall be deemed a circuit.

114 All words of the communication transmitted are to be counted, excepting the date and place at which such communication is filed.

All messages of less than twenty-five words, address and signature included, shall be rated as if containing twenty-five words, and all messages exceeding twenty-five words shall be rated by the exact number of words they contain, address and signature included.

Each company will be allowed to charge for messages received from another line at the same rates as if received from the Government direct for transmission over its own line.

Companies forwarding messages to another line will be entitled to compensation at established rates to the terminus of their lines at the same rates as if for messages transmitted exclusively over their own lines.

The rate for all telegraphic communications known as the Signal Service weather reports shall not exceed three cents for each word of said report for each circuit over which they may pass, in accordance with the schedule of circuits and plans of the Chief Signal Officer of the Army, which are now or may hereafter be adopted by him for transmitting these reports, or such parts thereof as he may designate, in such words or ciphers as may from time to time be directed by him. The amount thus estimated is to be taken in full payment for said reports; no additional allowance to be made for drops, office messages, or other services or special facilities required by the Chief Signal Officer for the correct and prompt transmission of said Signal Service reports.

If at any time, from competition or other cause, telegraph rates should be reduced so that a message of ten words may be sent for the public at less than that above-mentioned for a twenty-five-word message, then, and in that case, this order shall be changed to meet such lower public rate; it being intended by this proviso that in no case shall the Government be compelled to pay more for a twenty-five-word message, including address and signature, than the public is required to pay for a ten-word message, exclusive of such address and signature.

115 Special rates have been filed by the American Rapid Telegraph Company for telegrams between certain points, as follows, viz: Fifteen cents for twenty words, and five cents for each additional ten words or less, addresses and signatures excluded, or twenty cents for twenty-five words, and five cents for each additional ten words or less, between the following points: Washington, Baltimore, Philadelphia, Newark, Patterson, and Trenton, N. J.; New York, Brooklyn, N. Y.; Bridgeport, New Haven, Meriden, Hartford, Conn.; Springfield, Boston, Mass., and Providence, R. I.

Telegrams sent by all other companies between these points must be at these reduced rates.

All officers of the United States Government should indorse upon official messages transmitted by them the words "Official business," and should report to the Postmaster-General any charges in excess of the above rates.

THOMAS L. JAMES,
Postmaster-General.

TELEGRAPH COMPANIES SUBJECT TO THE PROVISIONS OF THIS ORDER.

The following is a list of telegraph companies that have filed acceptance of the provisions of the act of July 24, 1866, up to the thirtieth day of June, 1881:

1. The American Submarine Telegraph Company of New York, N. Y. Received and filed July 24, 1866.

2. The National Telegraph Company of New York, N. Y. Received and filed July 30, 1866.

3. The Globe Insulated Lines Telegraph Company of New York. Received and filed July 31, 1866.

4. International Telegraph Company of Portland, Me. Received and filed October 6, 1866.

5. The Atlantic and Pacific Telegraph Company of New York, N. Y. Received and filed March 19, 1867.

6. The Franco-American Land and Ocean Telegraph Company of New York, N. Y. Received and filed April 6, 1867.

116 7. The Globe Telegraph Company of New York. Received and filed May 30, 1867.

8. Mississippi Valley National Telegraph Company of St. Louis, Mo. Received and filed June 4, 1867.

9. Western Union Telegraph Company of New York. Received and filed June 8, 1867.

10. Northwestern Telegraph Company of Kenosha, Wis. Received and filed July 30, 1867.

11. Great Western Telegraph Company of New York. Received and filed January 17, 1868.

12. The Franklin Telegraph Company of Boston, Mass. Received and filed April 4, 1868.

13. The Insulated Lines Telegraph Company of Boston, Mass. Received and filed April 13, 1868.

14. Pacific and Atlantic Telegraph Company of Pittsburgh, Pa. Received and filed July 22, 1868.

15. The Atlantic and Pacific States Telegraph Company of Sacramento, Cal. Received and filed Sept. 7, 1868.

16. The Eastern Telegraph Company of Philadelphia, Pa. Received and filed October 5, 1868.

18. Cape May and Shore Telegraph Company, New York City. Received and filed April 2, 1869.

19. Peninsula Telegraph Company, New York City. Received and filed May 9, 1869.

20. Ocean Telegraph Company of Boston, Mass. Received and filed July 15, 1869.

21. The American Cable Company of New York. Received and filed April 15, 1870.

22. Southern and Atlantic Telegraph Company of Philadelphia, Pa. Received and filed July 22, 1870.

23. International Ocean Telegraph Company, New York City. Received and filed January 20, 1871.

24. Missouri River Telegraph Company of Sioux City, Iowa. Received and filed May 3, 1871.

25. The Marine and Inland Telegraph Company of New Jersey, 715 Locust street, Philadelphia. Received and filed November 27, 1872.

26. Atlantic and Pacific Telegraph Company of Missouri. Executive office, 145 Broadway, New York City. Received and filed May 8, 1877.

117 27. New Jersey and New England Telegraph Company. Received and filed November 21, 1878. Address, A. L. Worthington, No. 10 Green street, Trenton, N. J.

28. The American Rapid Telegraph Company, 41 Wall street, New York. Received and filed April 12, 1879. Special rates received and filed April 1, 1881.

29. Central Union Telegraph Company, 145 Broadway, New York. Received and filed May 9, 1879.

30. New York Land and Ocean Telegraph Company. Received and filed May 10, 1879.

31. Deseret Telegraph Company, Salt Lake City, Utah. Received and filed May 19, 1879.

32. American Union Telegraph Company of New York, 145 Broadway, New York. Received and filed June 28, 1879.

33. The American Union Telegraph Company of Missouri, Chas. S. Greeley, president, St. Louis, Mo. Received and filed July 9, 1879.

34. Wabash Railway Company, Cyrus W. Field, president, New York. Received and filed July 11, 1879.

35. The American Union Telegraph Company of New Jersey, D. H. Bates, president, Jersey City, N. J. Received and filed July 17, 1879.

36. The Baltimore and Ohio Railroad Company of Maryland, John W. Garrett, president, Baltimore, Md. Received and filed July 18, 1879.

37. The American Union Telegraph Company of Baltimore City, Md. Received and filed July 31, 1879.

38. The Deer Lodge Telegraph Company of Butte City, Mont. Received and filed August 30, 1879.

39. The American Union Telegraph Company of Pennsylvania, D. H. Bates, president, Philadelphia. Received and filed September 4, 1879.

40. The American Union Telegraph Company of Indiana, La Fayette, Ind. Received and filed Sept. 12, 1879.

41. The Cheyenne and Black Hills Telegraph Company, W. H. Hibbard, superintendent, Cheyenne, Wyoming. Received and filed November 7, 1879.

118 42. The American Union Telegraph Company of Ohio, Frank B. Swayne, president, Toledo, Ohio. Received and filed November 8, 1879.

43. The American Union Telegraph Company of Louisiana, Ed Leloup, secretary, New Orleans, La. Received and filed March 1, 1880.

44. Baltimore and Ohio Telegraph Company of Ohio, Geo. Hoadly, president, Cincinnati, Ohio. Received and filed September 3, 1880.

45. The Wabash, St. Louis and Pacific Railway Company of St. Louis, Mo., Solon Humphreys, president, No. 80 Broadway, New York, N. Y. Received and filed September 13, 1880.

46. Baltimore and Ohio Telegraph Company of Illinois, C. H. Hudson, president, No. 81 South Clark street, Chicago, Ill. Received and filed September 23, 1880.

47. Frontier Telegraph Company of Texas, G. O. Appleby, president, Lampasas, Texas. Received and filed October 25, 1880.

48. Bankers' and Merchants' Telegraph Company of New Jersey, J. Heron Coosman, president, No. 58 Broadway, New York, N. Y. Received and filed April 21, 1881.

49. Bankers' and Merchants' Telegraph Company of New York, Wm. N. Maris, president, No. 58 Broadway, New York, N. Y. Received and filed June 8, 1881.

Rates of pay for communications by telegraph.

POST-OFFICE DEPARTMENT,
Washington, D. C., Aug. 8, 1881.

Owing to an error made in the circular issued June 30th, 1881, fixing the rates of pay for communications by telegraph, and the misunderstanding which has arisen as to the meaning of said circular, attention is called to the following:

1st. The clause in said circular referring to the special rates of the American Rapid Telegraph Company should read:

119 "A special rate has been filed by the American Rapid Telegraph Company for telegrams between certain points, as follows, viz: fifteen cents for twenty words, and five cents for each additional ten words or less, addresses and signatures excluded, between the following points: Washington, Baltimore, Philadelphia, Newark, Paterson, and Trenton, N. J.; New York, Brooklyn, N. Y.; Bridgeport, New Haven, Meriden, Hartford, Conn.; Springfield, Boston, Mass.; and Providence, R. I."

2d. All dispatches, Signal Service weather reports excepted, sent by any company between the points named above must be at this rate.

3d. The clause in the circular mentioned, which reads:

"If at any time, from competition or other cause, telegraph rates should be reduced so that a message of ten words may be sent for the public at a less rate than that above mentioned for a twenty-five word message, then, and in that case, this order shall be changed to meet such lower public rate; it being intended by this proviso that in no case shall the Government be compelled to pay more for a twenty-five word message, including address and signature, than the public is required to pay for a ten-word message, exclusive of such address and signature," must not be confounded with the clause referring to the American Rapid rate. That is to say, the twenty-word basis adopted by the American Rapid Company is substituted, so far as the points reached by its lines are concerned, for the long-established ten-word basis of other companies, and the rule that twenty-five words, including address and signature, must be sent for the Government at the same rate that ten words, exclusive of address and signature, are sent for the public, does not apply to dispatches sent between these points. The lowest rate at which any dispatch can be sent between the points reached by the American Rapid Telegraph Company, no matter how small the number of words it contains, is fifteen cents.

4th. The address and signature are not to be counted in dispatches sent between the points above named.

THOMAS L. JAMES,
Postmaster-General.

120 *Rates of pay for communications by telegraph.*

POST-OFFICE DEPARTMENT,
Washington, D. C., June 30, 1882.

Whereas, by the act of Congress approved July 24, A. D. 1866, entitled "An act to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military, and other purposes," in section second it is enacted: that telegraphic communication

between the several Departments of the Government of the United States and their officers and agents shall, in their transmission over the lines of said companies, have priority over all other business, and shall be sent at rates to be annually fixed by the Postmaster General.

Now, therefore, in pursuance and by virtue of the authority on me by said act conferred, I Timothy O. Howe, Postmaster-General of the United States, do hereby fix the rates at which the telegraphic communications aforesaid shall be sent for the year commencing July 1, A. D. 1882, as follows, namely:

The rate of all telegraphic communications, sent otherwise that over circuits established by the Chief Signal Officer of the Army for the transmission of enciphered weather reports, shall be as follows, viz:

One cent per word for each circuit through which it shall be transmitted, said rate to be computed subject to the following conditions, viz:

A distance of five hundred miles, as computed by the topographer of the Post-Office Department, shall be deemed a circuit, and the shortest practicable route of the company transmitting the message shall in all cases be the basis of computation.

If, in computing circuits, there shall be found one or more circuits and a fraction of a circuit, such fraction shall be deemed a circuit.

If a communication shall be sent a distance less than 500 miles, that distance shall be deemed a circuit.

All words of the communication transmitted are to be counted, excepting the date and place at which such communication is filed.

121 All messages of less than twenty-five words, address and signature included, shall be rated as if containing twenty-five words; and all messages exceeding twenty-five words shall be rated by the exact number of words they contain, address and signature included.

Each company will be allowed to charge for messages received from another line at the same rates as if received from the Government direct for transmission over its own line.

Companies forwarding messages to another line will be entitled to compensation at established rates to the terminus of their lines at the same rates as if for messages transmitted exclusively over their own lines.

The rate for all telegraphic communications in cipher known as the Signal Service weather reports shall not exceed six cents for each word of said report for each circuit over which they may pass, in accordance with the schedule of circuits of plans of the Chief Signal Officer of the Army, which are now or may hereafter be adopted by him for transmitting these reports. The amount thus estimated is to be taken in full payment for said reports; no additional allowance to be made for drops or office messages.

If at any time, for competition or other cause, telegraph rates should be reduced so that a message of ten words may be sent for the public at a less rate than that above mentioned for a twenty-five-word message, then, and in that case, this order shall be changed to meet such lower public rates; it being intended by this proviso that in no case shall the Government be compelled to pay more for a twenty-five-word message, including address and signature, than the public is required to pay for a ten-word message, exclusive of such address and signature.

Special rates have been filed by the American Rapid Telegraph Company for telegrams between certain points, as follows, viz: Fifteen cents for twenty words, and five cents for each additional ten words or less, addresses and signatures excluded, between the following points:

122 Washington, D. C.; Baltimore and Conowingo, Md.; Springfield, Boston, Brighton, Great Barrington, Marlboro, North Attleboro, Waltham and Worcester, Mass.; New York, Albany, Batavia, Amsterdam, Buffalo, Hudson, Jamestown, Little Falls, Lyons, Port Chester, Rochester, Rome, Salamanca, Schenectady, Syracuse, Troy, Utica, and Brooklyn, N. Y.; Newark, Paterson, Trenton, and Caldwell, N. J.; Philadelphia, Bedford, Bradford, Carlisle, Fannettsburgh, Franklin, Greensburgh, Harrisburgh, Lancaster, Mercer, Newburgh, Newcastle, Oil City, Pittsburgh, Titusville, Zelienople, Warren, West Chester, York, Shrewsbury, and East Liberty Stock Yards, Pa.; Pawtucket and Providence, R. I.; Hartford, Willimantic, Bridgeport, New Haven, and Meriden, Conn.

Telegrams sent by all other companies between these points must be at these reduced rates.

All officers of the United States Government should indorse upon official messages transmitted by them the words "Official business," and should report to the Postmaster-General any charges in excess of the above rates.

T. O. Howe,
Postmaster-General.

Rates of pay for communication by telegraph.

Post Office Department,
Washington, September 4, 1884.

Whereas, by the act of Congress approved July 24, 1866, entitled "An act to aid in the construction of telegraph lines and to secure to the Government the use of the same for postal, military, and other purposes," it is provided that telegraphic communications between the several Departments of the Government and their agents shall, in their transmission over the lines of said companies, have priority over all other business, and shall be sent at rates to be annually fixed by the Postmaster-General; now, therefore, by virtue of the authority conferred on me by said act, I,

123 Walter Q. Gresham, Postmaster-General of the United States, do hereby fix the rates at which such communications (not including those passing over circuits established by the Chief Signal Officer of the Army) shall be sent until the close of the present fiscal year, as follows:

For day messages of not exceeding twenty (20) words, exclusive of the date, twenty (20) cents for distances within one thousand (1,000) miles, with an additional charge of five (5) cents for every additional two hundred and fifty miles, or fraction thereof, but for no distance is the rate to exceed fifty (50) cents.

For night messages of not exceeding twenty (20) words, exclusive of date, fifteen (15) cents for all distances below two thousand miles, and for greater distances twenty-five (25) cents.

For both day and night messages an addition of one-fifth the rate is to be made for every five (5) words or fraction thereof in excess of twenty (20) words.

Provided, That in no case shall the Government be charged higher rates than the public is charged for the same service.

In computing distances the shortest practicable route of the company transmitting the message shall, in all cases, be the basis of computation.

The rate for all messages in cipher, known as the Signal Service Weather Reports, shall not exceed three (3) cents for each word sent over each circuit as now or hereafter established by the Chief Signal Officer of the Army. All messages sent over a circuit will be dropped at all designated intermediate offices therein without additional charge.

All officers of the United States should indorse upon official messages transmitted by them the words "Official business," and should report to the Postmaster-General any charge in excess of the above rates.

W. Q. GRESHAM,
Postmaster-General.

124 Both sides having rested, the counsel for the plaintiff moved the court to direct the jury to find a verdict for the plaintiff.

This motion the court denied and to this ruling the plaintiff by its counsel excepted, which exception was duly noted and allowed.

The counsel for the defendants then moved the court to direct the jury to find a verdict for the defendants.

This motion the court granted and to this ruling the plaintiff by its counsel excepted, which exception was duly noted and allowed.

The court directed the jury as follows:

125 The exhaustive arguments of counsel have covered a much broader field of discussion than seems necessary for the determination of the case.

The claim is for $12,495.62, being the aggregate amount of various sums of money paid by different officers of the Government to the Western Union Telegraph Company for the transmission of telegraphic messages over the line of the Union Pacific Railroad Company from Council Bluffs to Ogden and from Kansas City to Boaz. The railway company, or its predecessors in interest whose obligations and liabilities it has assumed, received from the Government large grants of land and bonds under the acts of 1862 (12 U. S. Stat., 439) and 1864 (13 U. S. Stat., 356) to aid in the construction and maintenance of railway and telegraphic lines west of the Mississippi River. By virtue of sec. 6 of the act of 1862, above named, it was provided that, in consideration of the grants of lands and bonds to aid in the building of railroad and telegraph lines,

126 the companies receiving the same should (among other things) "keep the telegraph line in repair and use, and should at all times transmit despatches over said telegraph line * * for the Government whenever required to do so by any department thereof, and that the Government should at all times have the preference in the use of the same * * at fair and reasonable rates of compensation not to exceed the amounts paid by private parties for the same kind of service." All compensation for such services rendered for the Government were to be applied to the payment of the bonds and interest until the whole amount was fully paid.

By sec. 15 of the act of 1864, above mentioned, the several companies named (including the defendant railway company's predecessors) were required to use their telegraph lines for all purposes of communication, so far as the public and Government are concerned, as one continuous line, and the proprietor of any line of telegraph authorized by the act was forbidden to refuse or fail to convey for all persons requiring the transmission of news and messages. Under these acts it was the duty of the defendant railway company to be prepared at all times with the requisite facilities to carry out these obligations, and to transmit despatches for the Government whatever required to do so by any department thereof at the rates provided for.

Further provision for securing to the Government superior telegraphic facilities was made by Congress in the act of July 24, 1866, and subsequent acts (now found in sec. 5263, 5264, 5265, 5266, 5267, and
127 5268 of the Revised Statutes), whereby the use of portions of the public domain and of materials taken from the public lands was accorded to any and all telegraph companies organized under State laws for the construction, operation, and maintenance of their lines of telegraph. These privileges were conferred only on such companies as should file with the Postmaster-General their written acceptance of the restrictions and obligations required by the act. Among these obligations was that of transmitting Government despatches over their lines at rates to be fixed by the Postmaster-General.

The section reads as follows:

"SEC. 5266. Telegrams between the several departments of the Government and their officers and agents, in their transmission over the lines of any telegraph company which has been given the right of way, timber or station lands from the public domain, shall have priority over all other business at such rates as the Postmaster-General shall annually fix."

Prior to the sending of the despatches covered by the complaint the Western Union Telegraph Company had filed such written acceptance. During all the time covered by the claim of the complaint, it maintained and operated (as set forth below) lines of telegraph between Council Bluffs and Ogden and between Kansas City and Boaz. The Postmaster-General from time to time fixed the rates for transmission of Government messages as provided by Sec. 5266. The amount claimed in the com-
128 plaint is arrived at by a calculation, in which these special rates are employed; and is very much less than it would be if calculated at the ordinary commercial rates prevailing along those lines at that time.

At the time, then, that the dispatches, which are the subject of the action, were sent, the Government was entitled, over the lines above referred to, to call upon either of these defendant corporations to take and transmit the same in accordance with the obligations into which such corporation had entered, in return for Government aid. It had its choice of agencies. The defendants do not dispute the proposition that, had the Government officer who sent the dispatch required the agent who received it to send it by the railway wires, the provisions of the railway acts above referred to as to rate and distribution of the proceeds would apply. Nor, on the other hand, can it be disputed that, if such officer had delivered the dispatch to the agent of the telegraph company for transmission as a Gov-

ernment telegraph at the rates fixed by the Postmaster-General, it would have been the duty of the telegraph company to give it priority and to transmit it at those rates under the provisions of the telegraph acts. As matter of fact all of said messages were delivered to the Western Union Telegraph Company by the agent or officer of the Government sending the same, written upon the Western Union Telegraph Company's blanks, and directed to the receiver of such message at the point of destination and without any direction to transmit the same over the bonded portion
129 of the line of telegraph of the Union Pacific Railway Company for the whole or any part of the distance. The compensation for each of the messages was computed and paid for as one entire service (whether it was wholly or partly only over the lines from Council Bluffs to Ogden and from Kansas City to Boaz), at the then ruling rate for such entire distance fixed by the Postmaster-General. The despatches were paid for either by the sender or the receiver and have been allowed to him upon the settlement of his account. It is claimed by the Government, however, that the circumstances under which the dispatches were delivered for transmission were such as to entitle it to claim that the agency chosen for the service was the railway and not the telegraph company, and that the former was thus required to transmit them under the terms of its charters.

Prior to July 1, 1888, the Western Union had constructed and was operating continuous telegraph lines on or near the roadbed of the railway company from Council Bluffs to Ogden, and was also operating continuous lines along or upon the roadbed of the railway company from Kansas City to Boaz. Upon July 1, 1881, the defendants undertook to enter into an agreement for the joint operation of all these lines and of the lines constructed by or then operated by the railway company, and during the time covered by the claim of the complaint operated the same in accordance with the terms thereof. Inasmuch as this agreement could in no way alter the obligations which the contracting parties owed to the Government under the statutes above referred to, it is not neces-
130 sary to discuss its validity nor to refer to its terms save in the following particular. The persons who were to receive and transmit such messages as might be delivered at the several stations, whether on commercial or on Government business, were the employees of the railway company, who thereafter acted as agents for both the telegraph and railway company. At each receiving station the same individual received the "telegrams between the several departments of the Government and their officers and agents," for the transmission of which only the special rates fixed by the Postmaster-General, under the telegraphs acts, were to be charged, and also "the despatches for the Government, whenever required to do so, by the department thereof," which were to be accounted for in the manner prescribed by the railway acts. Each party reserved the exclusive use of not exceeding three wires between Council Bluffs and Ogden and not exceeding two wires between Kansas City and Denver (which is beyond Boaz). There is nothing to show that under this agreement the railway company disabled itself from fulfilling its obligations under the statutes; it had operators to receive the despatches it might be required to transmit, and wires by which to transmit them, and could certainly have kept an account of all such. It did not, indeed, keep such account of the despatches enumerated in the bill of particulars; but if it

appears that the Government did not, as between the two systems of telegraphic service in each of which it had reserved special advan-
131 tages to itself, make choice of the railway; if it never required the transmission of the despatches in the manner provided in the railway acts, the railway company was under no obligation to keep such account. The statute contemplates some act of selection, something which shall require the railway company to fulfill its obligations. No doubt a formal requisition by a department of the Government is not in each case necessary, the officers and employees of such department may fairly be considered its agents for that purpose, but their acts must go to the extent of indicating that on behalf of the department they claim the fulfil'ment of such obligations.

The first item on the bill of particulars is a despatch from Jeffersonville to San Francisco. Neither of these places is on the subsidized line. At neither of them was there any agent of the railway company. The delivery on the Western Union blank, to a Western Union agent at the former place, of a despatch, whose nature indicated that it was entitled to special facilities and rates at the hands of the telegraph company, and with no further request than that it should be forwarded to its destination, was in no sense a requirement that at some remote point it should be transferred for a portion of the route to another telegraphic system, from which the Government was entitled, if it chose, to require a different service upon different terms. It was the duty of the agent receiving it to forward it at once and, if it were possible, without break, to its destination.

132 If in its transit it were taken at some intermediate point by an agent of the telegraph company who was also, at that point, an agent of the railway company and operating the wires of both, it would, in the absence of any instructions, have been an unwarranted interference on his part with the Government's right of choice to have undertaken to make the change. It was not for him to determine which of its two subsidized systems was to be employed. He was bound to know that the message which had thus come over the wires of his company was being transmitted at special rates, and had no authority by transferring it to another system to alter those rates for any portion of the route. Which of the two systems it was on the whole for the best interest of the Government to employ was a matter to be determined by its agents, not by those of the defendants.

Nor does it seem reasonable to apply any different rule where the despatch was delivered at a station on the line of the road where the operator was an agent of both companies. The presentation of the despatch on a Western Union blank (and, also, in the case of prepaid messages, the payment of the special rate), without any direction to use the railway system, was notice to him, which he could not disregard, to give to the message the advantages which accrued from its transmission by the Western Union lines.

Verdict directed for defendants.

133 Thereupon the jury, in accordance with the direction of the court, found a verdict for the defendants.

And inasmuch as the matters, things, and exceptions aforesaid would not otherwise appear by the record, I have settled, allowed, and signed this bill of exceptions on the prayer of the said plaintiff by its counsel, and

It is ordered that the same be filed nunc pro tunc as part of the record herein with like force and effect as if the same had been reduced to writing, signed, and filed before the case was given to the jury.

Witness my hand at the city of New York, this 20th day of March, 1891.

E. HENRY LACOMBE.

(Endorsed:) U. S. circuit court, southern district of New York. The United States versus The Western Union Telegraph Company and The Union Pacific Railway Company. Plaintiff's bill of exceptions. Edward Mitchell, United States attorney, attorney for plaintiff. U. S. circuit court. Filed Mar. 20, 1891. John A. Shields, clerk.

134 SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES OF AMERICA, PLAINTIFF in error,
vs.
THE WESTERN UNION TELEGRAPH COMPANY and The Union Pacific Railway Company, defendants in error.
} Assignment of errors.

Afterwards, to wit, on the third Monday of April, in the same term, before the justices of the said court at the Capitol in Washington, come the said plaintiffs in error, by Edw'd Mitchell, their attorney, and say that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said defendants in error against the said plaintiffs in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiffs against the said defendants.

And the said plaintiffs pray that the judgment aforesaid for the error aforesaid and other errors in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that they, the said plaintiffs, may be restored to all things which they have lost by occacasion of said judgment, &c.

EDWARD MITCHELL,
Attorney for Plaintiffs in Error.

135 (Indorsed:) United States Supreme Court. The United States of America, plaintiffs in error, vs. The Western Union Telegraph Company and The Union Pacific Railway Co., defendants in error. Assignment of error. Edward Mitchell, attorney for plaintiffs in error. Due service of a copy of the within assignment of error is hereby admitted this 27 day of March, 1891. Rush Taggart, attorney for in error. To Holmes & Adams, attorney for in error. U. S. circuit court. Filed Mar. 27, 1891. John A. Shields, clerk.

136 SUPREME COURT OF THE UNITED STATES.

UNITED STATES OF AMERICA, PLAINTIFF in error,
vs.
THE WESTERN UNION TELEGRAPH COMPANY and The Union Pacific Railway Company, defendants in error.
} Joinder in error.

And afterwards, to wit, on the third Monday of April, 1891, the said defendant in error, The Western Union Telegraph Company, by Rush Taggart, its attorney, comes here into court and says that there is no error either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid.

And it prays that the said Supreme Court, before the justices thereof now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid in form aforesaid given may be in all things affirmed, &c.

RUSH TAGGART,
Attorney for the W. U. Tel. Co., Deft. in Error.

137 (Indorsed:) United States Supreme Court. The United States of America, plaintiff in error, vs. The Western Union Telegraph Company et al., defendants in error. Joinder in error. Rush Taggart, attorney for W. U. Tel. Co. Service of a copy of the within is acknowledged this 4th day of April, 1891. Edward Mitchell, U. S. attorney, and attorney for plaintiff in error. U. S. circiut court. Filed Apl. 4th, 1891. John A. Shields, clerk.

138 SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES OF AMERICA, PLAINTIFF in error,
vs.
THE UNION PACIFIC RAILWAY COMPANY, impleaded, &c., deft. in error.

And afterwards to wit, on the 4th day of April, 1891, in the October term for the year 1890, the said Union Pacific Railway Company by Holmes & Adams, its attorneys, freely came here into court and says, that there is no error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid, and it prays that the said Supreme Court of the United States, before the justices thereof now leave, may proceed to examine as well the record and proceedings aforesaid as the matters
139 aforesaid above assigned for error, and that the judgment aforesaid in form aforesaid given may be in all things affirmed.

HOLMES & ADAMS,
Attorneys for the Union Pacific Railway Company, Defendant in Error.

(Endorsed:) United States Supreme Court. The United States of America *vs.* The Union Pacific R'way Co., impleaded, etc. Joinder in

error, Holmes & Adams, attorneys for deft. U. P. Ry., 35 Wall st., New York. Service of the within is hereby admitted. Dated New York, April 4th, 1891. Edward Mitchell, attorney for the United States. U. S. circuit court, filed Ap'l 4th, 1891, John A. Shields, clk.

140 UNITED STATES OF AMERICA, *ss.:*

To the Western Union Telegraph Company and the Union Pacific Railway Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the third Monday of April, eighteen hundred and ninety-one, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein the United States of America are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated, New York City, March 26, 1891.

E. HENRY LACOMBE.

141 (Indorsed:) U. S. Supreme Court. E. & A. A., 977. The United States of America, plaintiff in error, against The Western Union Telegraph Company and The Union Pacific Railway Company, defendant in error. Original. Citation. Edward Mitchell, attorney for plaintiffs in error. Due service of a copy of the within citation is hereby admitted this 27th day of March, 1891. Rush Taggart, Holmes & Adams, attorney for defendant in error. U. S. circuit court. Filed Mar. 27, 1891. John A. Shields, clerk.

(Indorsement on cover:) S. New York, C. C. U. S. No. 441. The United States, plaintiff in error, *vs.* The Western Union Telegraph Company and The Union Pacific Railway Company. 14584. Filed April 20, 1891.